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IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1966~~ 1967

No. 272

EIKO UEHARA ROSE, *Petitioner*,

v.

ROBERT S. MCNAMARA, Secretary of Defense,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No.

EIKO UEHARA ROSE, *Petitioner*,

v.

ROBERT S. MCNAMARA, Secretary of Defense,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner Eiko Uehara Rose, an American citizen, prays that a Writ of Certiorari issue to review the erroneous decision and judgment of the United States Court of Appeals for the District of Columbia Circuit entered on March 23, 1967.

THE OPINIONS BELOW

The Memorandum Opinion of the United States District Court for the District of Columbia is printed in Appendix[1] "A", infra, at p. 1a and is reported in

[1] Hereinafter sometimes referred to as App.

252 F. Supp. 111 (1966). The Opinion of the United States Court of Appeals for the District of Columbia Circuit is printed in Appendix "A" infra, at p. 6a and has not been reported. The opinion of the United States District Court for the District of Columbia in *Nicholson* v. *McNamara,* involving the constitutionality of the Ryukyuan Island court deriving its authority from the President entitled "The United States Civil Administration Court, Ryukyuan Islands", in *Nicholson* v. *McNamara,* is printed in Appendix "B", infra, at p. 16a. This opinion has not been reported. The opinion in the similar case of *Ikeda* v. *McNamara,* also involving the constitutionality of the Ryukyuan Island court, is printed in Appendix "B", infra, at p. 20a. This opinion has not been reported.

JURISDICTION

The Court of Appeals below filed its Opinion and Judgment on March 23, 1967. The jurisdiction of this Court is invoked under Title 28, U.S.C., Sec. 1254(1).

QUESTIONS PRESENTED

1. Whether the Petitioner, a United States citizen, was deprived of her constitutional rights to be tried by a Constitutional court created under Article III of the Constitution of the United States.

2. Whether Petitioner was denied her constitutional right to be tried by a Federal jury of her peers, that is, citizens of the United States, as required by the Congress of the United States.

3. Whether the United States Civil Administration Court for the Ryukyuan Islands was lawfully established and whether Civil Administration Ordinance No. 144 and the so-called Ryukyuan Income

Tax Law, established under delegated Executive authority, are constitutional, and whether Petitioner can be found guilty of a crime for the alleged violation of a military ordinance and a so-called Ryukyuan Act based solely upon a delegation of Executive power under Executive Order No. 10713, as amended, absent an Act of Congress declaring such conduct of an American citizen to be criminal and absent Congressional imposition of criminal penalties.

4. Whether Petitioner's constitutional right to an indictment by a Federal grand jury of her peers, to a trial by a jury of her peers, to a trial in a court created under Article III of the Constitution of the United States and/or by an Act of Congress has been violated by the conduct of the servants and agents of the Secretary of Defense, purportedly acting on behalf of the President, pursuant to delegation of authority in Executive Order No. 10713, as amended.

CONSTITUTIONAL PROVISIONS, TREATY AND STATUTE INVOLVED

Article III, Section 2, in its applicable part, of the United States Constitution provides:

> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; . . ."

Article III, Section 1 of the Constitution provides, in part:

> "Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges,

both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

The Fifth Amendment of the Constitution of the United States provides:

"AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Sixth Amendment of the Constitution of the United States provides:

"AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

On January 28, 1952, Japan entered into a Treaty of Peace with the United States. Article 3 of the Treaty, applicable here, reads as follows:

> "Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands). . . . Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters." (App. "C", infra, p. 24a)

No statute of the United States is involved creating the crime and imposing criminal penalties for which the Petitioner was erroneously convicted below or creating the United States Civil Administration Court.

28 U.S.C.A., Sec. 1861, reads as follows:

QUALIFICATIONS OF FEDERAL JURORS

Any citizen of the United States who has attained the age of twenty-one years and who has resided for a period of one year within the judicial district, is competent to serve as a grand or petit juror unless—

> (1) He has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.
>
> (2) He is unable to read, write, speak, and understand the English language.

(3) He is incapable, by reason of mental or physical infirmities to render efficient jury service.

June 25, 1948, c. 646, 62 Stat. 951; Sept. 9, 1957; Pub. L. 85-315, Part V, § 152, 71 Stat. 638.

The Military Ordinance, Civil Administration Ordinance No. 144, and the so-called Bill of the Ryukyuan Government, Act No. 44, dated 12 October, 1952, are printed in the Appendix "C", infra, p. 43a and p. 35a.

STATEMENT OF THE CASE

Petitioner, an American citizen residing on the Island of Okinawa in the Ryukyuan Islands, was convicted of an alleged "violation of Section 2.2.29 of C.A. Ordinance No. 144", for evasion of income taxes imposed by a military ordinance entitled "Ordinance No. 114", dated July 21, 1953, issued by the Deputy Governor, Charles V. Bromley, Brigadier General of the United States Army. Ordinance No. 114 is printed in the Appendix "C", infra, p. 39a.

The alleged indictment in the name of the United States of America reads as follows:

Count 1. Violation of Section 2.2.29 of CA Ordinance No. 144.

In that EIKO UEHARA ROSE, being then the owner and recipient of taxable income derived from the operation of the Tea House August Moon, also known as the Tea House Matsunoshita, did, at Okinawa, Ryukyu Islands, on or about 5 September 1962 attempt to evade payment of income taxes in the total amount of about $70,000 lawfully due the Government of the Ryukyu Islands on taxable income derived by her from operations of the Tea House August Moon during the period from about 1 July 1957 to about 30 June 1962, in violation of

> Article 87 of Government of the Ryukyu Islands Act No. 44, dated 12 October 1952, "Income Tax Law," as amended and supplemented by Civil Administration Ordinance No. 114, dated 21 July 1953, "Ryukyuan Income Taxes," by wilfully, wrongfully, and unlawfully filing with the Government of the Ryukyu Islands false and fraudulent income tax returns for the period 1 July 1957 to 30 June 1962, from which substantial amounts of taxable income actually derived by her from operations of the Tea House August Moon, during the period covered by the said returns, were deliberately omitted by the said EIKO UEHARA ROSE. —(Appendix "C", infra, 48a)

Congress has never levied or imposed any income taxes on any American citizens in the Ryukyuan Islands and has never made the failure to pay any such taxes a crime against the United States.

Petitioner was tried in the United States Civil Administration Court for the Ryukyuan Islands, created by a delegation of Executive authority from the President of the United States, purportedly under Executive Order No. 10713, printed in the Appendix "C", infra, p. 24a.

Petitioner exhausted her rights in Okinawa. On appeal to the Court of Appeals of the United States Civil Administration Court for the Ryukyuan Islands, which is composed of the Judges who try the cases in the first instance, which appellate court was also created under a delegation of authority under Executive Order No. 10713, as amended, Petitioner's illegal conviction was affirmed.

Petitioner filed a complaint in the United States District Court for the District of Columbia, seeking

a declaratory judgment determining that her conviction was a nullity and in violation of her constitutional rights to be tried only in a court created under Article III of the Constitution of the United States or, at the very least, in a court created by the Congress of the United States in Okinawa, (which was transferred to the United States by Japan in the Treaty of Peace following the end of World War II in the Pacific) and only after indictment and trial by a jury of her peers, i.e. American citizens.

The Secretary of Defense filed a Motion for Summary Judgment. Petitioner filed a Motion for Summary Judgment. The District Court granted Respondent McNamara's Motion for Summary Judgment, denied Petitioner's Motion for Summary Judgment, and dismissed Petitioner's complaint.

Petitioner appealed to the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals affirmed, on the ground Petitioner's conviction was lawful because it was based on "the extensive power of the President," to set up special tribunals in "occupied foreign lands" to try American citizens for crimes, created under the President's power through a delegation of power in a court created also under the President's power, does not violate the constitutional rights of Petitioner under Article III and the Fifth and Sixth Amendments to the Constitution of the United States "under the special circumstances of our relationship to Okinawa" and under the "Treaty of Peace" with Japan, citing *Madsen* v. *Kinsella,* 343 U.S. 341 (1952).

This petition for a Writ of Certiorari has been timely filed, seeking a review of the erroneous decision of

the Court below, in order to protect Petitioner's constitutional rights and to have the important Constitutional questions involved determined by this Court.

REASONS FOR GRANTING THE WRIT

Several of the reasons and considerations governing review on Certiorari by this Court are present in this case.

The Court below has rendered a decision in conflict with the decisions of this Court and in conflict with earlier decisions of the Court below and has decided important constitutional questions upholding the right of the Executive Department to try American citizens in Okinawa, which has been transferred to the United States by the Treaty of Peace with Japan, which is no longer occupied, as peace came in 1952, in courts created by the Executive Department without Congressional authority, presided over by employees of the Executive Department who admittedly are not either Title III or legislative judges, for a crime created by military ordinances issued by the Defense Department, involving an indictment by a grand jury and a trial by a petit jury which were not composed entirely of American citizens, contrary to the provisions of Article III and the Fifth and Sixth Amendments to the Constitution of the United States and Title 28, U.S.C.A., Sec. 1861, requiring that Federal jurors be citizens of the United States.

Petitioner, a citizen of the United States, was denied an indictment and trial by juries of her peers, i.e., United States citizens—as required by Congress, six of the petty jurors being foreigners, the presiding Judge was not appointed by the President nor confirmed by

the Senate, but was an Army employee, as were the appellate Judges, who at times also sat as Trial Judges in the United States Civil Administration Court.[2] Such a court and such juries do not meet the constitutional requirements of Article III, the Fifth and Sixth Amendments to the Constitution and 28 U.S.C.A., Sec. 1861. Certainly the USCAR Judges are not independent Judges and certainly are not Article III Judges or in any sense legislative Judges. They are not authorized by law or by assignment to preside over felony trials in any United States Court involving an American citizen.

Also involved is the question, which should be decided by this Court, whether, assuming the President has power as Commander-in-Chief to declare acts of American citizens to be crimes, can the President delegate this power to others; has he delegated it to others; and can those persons, officers and employees of the United States Army, levy and impose taxes and declare the failure by an American citizen to pay such taxes to be criminal; and to prosecute the citizen in the USCAR Court under Executive Order No. 10713, as amended, without the protection of Article III, the Fifth and Sixth Amendments to the Constitution and 28 U.S.C.A. Sec. 1861.

The grave Constitutional questions here involved have been decided erroneously and in conflict with the applicable decisions of this Court.

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[2] Hereinafter sometimes referred to as "USCAR".

I. PETITIONER'S CONVICTION BY THE UNITED STATES CIVIL ADMINISTRATION COURT IN THE RYUKYUAN ISLANDS IS UNCONSTITUTIONAL AND VOID

Respondent's position below was that Petitioner had been convicted for the evasion of "Ryukyuan Islands income tax". The so-called "Government of the Ryukyuan Islands" is but a creature of the High Commissioner, a United States General, created under Executive Order No. 10713. Congress has never levied or imposed taxes on anyone in the Ryukyuan Islands. Bill No. 60, Act No. 44, passed August 28, 1952, purportedly enacted by the legislature of the Government of the Ryukyuan Islands is, for all intents and purposes, a military ordinance. This is clear from a reading of the "law" and Civil Administration Ordinance No. 144 dated July 21, 1953, issued by the Deputy Governor, Charles V. Bromley, Brigadier General of the United States Army (App., *infra,* p. 43a).

On April 28, 1952, Japan entered into a treaty terminating hostilities and bringing peace between the United States and Japan. Under Article 3 of this Treaty, the United States was given all powers of administration, legislation, and jurisdiction over the Ryukyuan Islands.

The system of government for the Ryukyuan Islands has its source in Executive Order No. 10713. The High Commissioner, a General in the United States Army, has control of all criminal proceedings in the Ryukyuan Islands. Petitioner, a United States citizen, was not tried in any court created under Article III of the Constitution and the USCAR court was not created by any Act of Congress. The Judges sitting in the USCAR courts are not appointed by the President nor confirmed by the Senate; are not legislative judges

(that is, judges functioning under an Act of Congress), but are appointed under the High Commissioner, a United States Army officer and serve both in the trial court and in the appellate court in the Islands. Petitioner is not a member of the Armed Forces and is not subject to trial under military law.

The Courts below held that the President has power over the Ryukyuan Islands seized during the war and this power continues even after the peace treaty was signed, notwithstanding that the islands were transferred by Japan to the United States for all administrative, legislative and jurisdictional purposes and the President can delegate to others the creation of a court system, the appointemnt of "judges" thereto, i.e., military personnel or civilians in the employ of the Department of Defense, and can indict and try American citizens for violations of so-called laws enacted under Executive Order No. 10713, not promulgated by the President directly, as crimes created by delegated authority from the President to military personnel in the Islands. Nowhere in Executive Order No. 10713 is any crime defined nor is any tax levied. The evasion of taxes is not stated by the President to be a crime.

We submit that the President (now that peace has come, a treaty has been signed and Japan has vested in the United States [not in the President] all powers of administration, legislation and jurisdiction over the Islands), has no power as Commander-in-Chief of the military forces to try American citizens for evasion of taxes levied by military personnel and for criminal tax evasion, also created by military personnel, in a USCAR Court, also created under delegated authority purportedly contained in Executive Order No. 10713.

The argument of Respondent and the Courts below that Petitioner was afforded every protection of the Bill of Rights because she was afforded an indictment by grand jury and a trial by a petty jury *not* composed entirely of United States citizens, is unsound.

Respondent's contentions and the decision below that *Reid* v. *Covert,* 354 U.S. 1; 77 S. Ct. 1222, 1 L. Ed. 2d 1148, does not confer on United States citizens abroad the right in felony cases to be tried in a Federal court established by Congress pursuant to Article III and with all the protections of the Bill of Rights are unsound.

The holding below that Article III does not cover alleged crimes committed by American citizens in Okinawa, on the erroneous theory that the evasion of Ryukyuan income taxes does not involve the United States, is specious and unsound.

All authority of the so-called "Ryukyuan Government" is derived from Executive Order No. 10713. The indictment is in no sense an indictment brought on behalf of the "Government of the Ryukyuan Islands". The indictment is in the name of "*The United States of America*" and charges a violation of Military Ordinances numbered C.A. 144 and C.A. 114.

The indictment on which Petitioner was convicted, and the only "charge" before this Court is a "violation of Section 2.2.29 of C.A. Ordinance No. 144". The "Government of the Ryukyuan Islands" is but an agency of the United States created under Executive Order No. 10713. The plaintiff in Okinawa, in name and in fact is "*The United States of America.*" (App. "C", infra, p. 48a).

We submit that there can be no such thing as a "local income tax" in the Ryukyuan Islands, as all such taxes are enforced by C.A. Ordinance No. 144, a military edict of the United States Army.

The decision below holds that the President has power to delegate to others the levying of taxes and the creating of crimes in the Ryukyuan Islands and to provide for the punishment of American citizens for such "crimes" in a court of a military nature created under the authority of the President under Executive Order No. 10713 on the erroneous premise that Okinawa is occupied enemy territory.

The fact that Congress is familiar with the courts in the Ryukyuan Islands in no sense dispenses with the constitutional provision requiring that American citizens be tried for felonies in an Article III court created pursuant to constitutional authority, since the Ryukyuan Islands are now under the legislative and administrative control of the United States, not the President.

We submit that *Reid* v. *Covert, supra,* and the cases following it hold that the Constitution of the United States protects American citizens and that when the United States *in time of peace* undertakes to try an American citizen for a felony, such trial has to be conducted in a court created by Congress under Article III and under the Fifth and Sixth Amendments to the Constitution.

The question of whether an American citizen is entitled to the protection of Article III and the Fifth and Sixth Amendments to the Constitution when tried for a felony in the Ryukyuan Islands has been before the United States District Court for the District of

Columbia on several other occasions. This question was before that Court in *Nicholson* v. *McNamara,* Habeas Corpus No. 141-61. In *Nicholson,* a Petition for Writ of Habeas Corpus was later amended to a Complaint for Declaratory Relief, in which Nicholson sought an adjudication that her conviction for a felony in a USCAR Court was contrary to the provisions of Article III and the Fifth and Sixth Amendments to the Constitution and violated her constitutional rights. In *Nicholson,* charge sheets were involved and no indictment or trial by petit jury was afforded. The District Court, speaking through Judge Joseph C. McGarraghy, held that "the confinement of Mrs. Nicholson pursuant to an Information charging her with a capital offense and her subsequent trial and conviction by a court without a jury, was a violation under her rights under Article III, Section 2, Clause 3, and the Fifth and Sixth Amendments to the Constitution". The decision of Judge McGarraghy in *Nicholson* has not been reported; hence it is printed verbatim in the Appendix "B" infra, p. 16a. Respondent McNamara in *Nicholson* appealed from the final judgment in Nicholson's favor, but this appeal was dismissed in April of 1964, by stipulation between the parties, pursuant to Rule 73(a), F.R.C.P.

On October 19, 1962, the District Court, through Charles F. McLaughlin, Judge, entered Findings of Fact and Conclusions of Law in *Ikeda* v. *McNamara,* Habeas Corpus No. 416-62. In *Ikeda,* the District Court held there was no provision in the Executive Order nor any rules of regulations issued thereunder which comply with Article III, Sec. 2, Clause 3, and with the Fifth and Sixth Amendments. Hence, the detention of the petitioner contravened Article III,

Sec. 2, Clause 3 of the Constitution and the Fifth and Sixth Amendments, and an Order was entered discharging the petitioner from McNamara's custody. No appeal was taken by McNamara from the decision of Judge McLaughlin in *Ikeda*. The Findings of Fact and Conclusions of Law of Judge McLaughlin have not been reported, hence they are printed verbatim in the Appendix "B" infra, p. 20a.

The decision below in our case upholds the conviction on the theory that the affording of an indictment and a jury trial (by foreigner jurors) of the Petitioner meets all the requirements of Article III of the Constitution and the Fifth and Sixth Amendments to the Constitution.

The decision below points out that, after *Nicholson* and *Ikeda* in 1963 by military ordinance, a grand jury indictment and petit jury trial were assured to defendants in Civil Administration courts. The decision below recognizes the validity of the *Nicholson* and *Ikeda* holdings in footnote 4, (App. "A", infra, p. 10a), but argues, quoting from Judge Gasch's Memorandum Opinion, that, "the record in no way reflects a denial of constitutional rights resulting from the operation of the courts of the Ryukyuan Islands. 252 F. Supp. 111, 113 (D.C.D.C., 1966)." The decision below and Judge Gasch's decision actually are bottomed on the premise that the power of the President to set up tribunals in *occupied foreign lands* and to try American citizens for crimes in those tribunals, authorized the trial of Petitioner in the USCAR Court, not created by Congress, but created under delegated authority of the President, relying on *Madsen* v. *Kinsella,* 343 U.S. 341 (1952), and that this power of the

President to so try American citizens survives the Treaty of Peace and continues today, even though we know that Okinawa is not "occupied foreign lands", but has been transferred to the United States for administrative, legislative and jurisdictional purposes.

(a) The United States Civil Administration Superior Court Ryukyuan Islands, was unlawfully established

The authority for establishing the USCAR Court was Proclamation No. 8 of General Donald P. Booth, under Section 10 of the Executive Order No. 10,713. Section 10 of the Executive Order No. 10,713 provided that judicial powers in the Ryukyuan Islands were to be exercised by two systems of courts—Ryukyuan courts and United States courts.

We submit President Eisenhower did not have authority to issue the Executive Order establishing these courts. Sections 1 and 2 of the Executive Order No. 10,713 provide that all administrative, *legislative* and judicial powers reposed in the United States concerning the Ryukyuan Islands shall be exercised by the Secretary of Defense, subject to the direction and control of the President. These basic and broad powers are stated to have been reposed in the United States by Article 3 of the Treaty of Peace with Japan.

The President, in Executive Order No. 10,713, declares by virtue of (1) this Treaty between Japan and the United States; (2) the Constitution of the United States; (3) his office as President of the United States, and (4) by his position as Commander-in-Chief of the Armed Forces, these extraordinary powers REPOSED in the UNITED STATES [not in the *President* of the United

States] by the Treaty, are now delegated to the Secretary of Defense [and from there to General Booth].

> "Congress and the President, like the Courts, possess no power not derived from the Constitution."
>
> —*Ex Parte Quirin,* 317 U.S. 1, 62 S. Ct. 2 (1942) at 25, 10.
>
> "In effect, such construction would permit amendment of that document in a manner not sanctioned by Article V. The prohibitions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and the Senate combined."
>
> —*Reid* v. *Covert,* 77 S. Ct. 1222, at p. 1230 (354 U.S. 1 (1957))

The President has no legislative power to be delegated to the Secretary of Defense (and from him to General Booth) to establish the U.S. Civil Administration Superior Court under the Constitution or because of the Treaty with Japan. And, in spite of the reference in the Executive Order to this authority as Commander-in-Chief of the Armed Forces, this office, in time of peace, cannot be used as a source of authority to legislate or to assume powers that are not the President's.

We read *Madsen* v. *Kinsella,* 343 U.S. 341, 72 S. Ct. 699 (1952), differently than the courts below. *Madsen* presented the question whether the United States Court of the Allied High Commission for Germany had jurisdiction, in 1950, to try a civilian citizen of the United States. The Court was appointed by the Military Governor of the U.S. Area of Control. His authority also stemmed from the President. The opinion ex-

plores the history of U.S. Military Commissions and Occupation Courts, stressing their flexibility; yet this Court held:

> "In the absence of attempts by Congress to limit the President's power, it appears that, as Commander-in-Chief of the Army and Navy of the United States, *he may, in time of war,* establish and prescribe the jurisdiction and procedure of Military Commissions, and of Tribunals in the nature of such commissions, *in territory occupied* by Armed Forces of the United States. His authority to do this *sometimes survives* cessation of hostilities."
>
> —at pp. 348, 703 (Emphasis supplied.)

Here, the peace treaty was signed in 1952 and peace has come. *Madsen* is inapposite. In *Reid* v. *Covert, supra,* Justice Black further clarified *Madsen:*

> "[Madsen] concerned trials in enemy territory which had been conquered and *held by force of arms* and which was being *governed at the time by our military forces.* In such areas the army commander can establish military or civilian commissions as an arm of the *occupation* to try everyone in the occupied area, whether they are connected with the army or not."
>
> —Note 63, 354 U.S. 1, 77 S. Ct. 1240 (Emphasis supplied.)

But *Madsen* clearly took place under Occupation law, before a Treaty of Peace was signed. Okinawa is not "occupied." True, the Army is present there, as it is in the United States. But, as Mr. Justice Jackson said in his concurring opinion in *Youngstown Sheet & Tube Co.* v. *Sawyer:*

> "Congress, fulfilling that function, has authorized the President to use the army to enforce cer-

tain civil rights. On the other hand, Congress has forbidden him to use the army for the purpose of executing general laws except when *expressly* authorized by the Constitution or by Act of Congress.

* * * * * * *

"No penance would ever expiate the sin against free government of holding that a President can escape control of executive powers by law through assuming his military role. What the power of command may include I do not try to envision, but I think it is not a military prerogative, without support of law, to seize persons or property because they are important or even essential for the military and naval establishment."

—343 U.S. 579, 72 S. Ct. 863, at 875 (1952)

In *United States* v. *Sharpnack*, 355 U.S. 297, 78 S. Ct. 291 (1958), this Court upheld the power of *Congress* to:

". . . delegate to local legislative bodies broad jurisdiction over Territories and ceded areas provided Congress retains, as it does here, ample power to revise, alter and revoke the local legislation."

In our case, *Congress* has *not acted* at all, and has delegated neither to the President nor to the High Commissioner, nor to the GRI Government, the power to establish the U.S. Civil Administration Superior Court by either Executive Order, *USCAR* Ordinance, or GRI law.

Justices Black and Douglas in their dissenting opinion (according to which even Congress did not have such power of delegation), pointed this out:

"There are two provisions of the Constitution involved in the present controversy. Article I,

Sec. 1 provides: 'All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.' A supplementary provision is that contained in Art. IV, Sec. 3, cl. 2: 'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *.'

"*It is, therefore, the Congress, and the Congress alone, that has the power to make rules governing federal enclaves. I suppose there would be no doubt, at least after Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 S. Ct. 863, 96 L. Ed. 1153, that this rule-making power could not be exercised by the President, let alone some federal agency such as the Department of the Interior.* The power to make laws under which men are punished for crimes calls for as serious a deliberation as the fashioning of rules for the seizure of the industrial plants involved in the Youngstown case. Both call for the exercise of legislative judgment; and I do not see how that requirement can be satisfied by delegating the authority to the President, the Department of the Interior, or, as in this case, to the States."

—*U.S.* v. *Sharpnack, supra,* at p. 298. (Emphasis supplied.)

The latest pronouncement by the Court below following *Reid* v. *Covert, supra,* supporting our contention that the Japanese Treaty does not confer power on the President in Okinawa to act freely from the constraints of the Constitution, is *Powell* v. *Zuckert,* Appeal No. 19,793, decided July 28, 1966, ... U.S. App. D.C. ..., 366 F. 2d 634. In *Powell* the Court below held:

"The Government's position is that the search was made lawful by paragraph 6(a), Article

XVII, Agreement under Article VI of the Treaty of Mutual Cooperation and Security, 11 U.S.T. 1665, which provides:

> 'The military authorities of the United States and the authorities of Japan shall assist each other in the carrying out of all necessary investigations into offenses, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense.'
>
> "This, appellee contends, made lawful the presence of Air Force agents 'as observers during the execution of a valid Japanese search warrant for appellant's off-base residence.' The obvious and decisive answer, of course, is that no agreement with a foreign nation can confer power on the Congress, or any other branch of Government, which is free from the restraints of the Constitution."
>
> —at p. 640

The decision below conflicts with *Powell*. We submit *Powell* is correct and the decision below is incorrect.

Thus, it is plain both Executive Order No. 10713 and USCAR Proclamation No. 8 by which the U.S. Civil Administration Superior Court was established, are unconstitutional and void.

(b) C. A. Ordinance 144 is unconstitutional and void

What we have shown about the lack of power of the President to legislate by Executive Order in order to establish the U.S. Civil Administration Superior Court applies to the purported enactment of USCAR Ordinances and GRI laws. For, all of the power and all of the authority, purportedly exercised by the High

Commissioner, the appellee's agent, in promulgating these "laws" and "ordinances" are based on Executive Order No. 10,713.

Section 1 of this Executive Order plainly states that all administrative, legislative and jurisdictional power shall be exercised in accordance with the Order.

Section 2 immediately delegates these powers to the Secretary of Defense, subject to the direction and control of the President.

Section 4 establishes the Civil Administration and the High Commissioner (General Booth), and Section 5 "continues" (but under certain limitations imposed by the Executive Order), the now existing Ryukyuan Central Government.

It is from Sections 6 and 7 of the Executive Order that the entire legislative "power" of the Government of the Ryukyuan Islands flows.

(c) The GRI Court System is invalid

Again, the President by this Order, has attempted to exercise powers which, according to the Constitution, he does not have. For, not only has he tried to authorize others to pass laws to be observed by all inhabitants, permanent or temporary, of the Ryukyuan Islands, and caused courts to be created to enforce them, but he has, in fact, abdicated and delegated power which only Congress has, all without Congressional authority.

> "But public and unoccupied lands, to which the United States have acquired title, either by deeds of cession from other states, *or by treaty* with a foreign country, *Congress,* under the power conferred upon it by the Constitution, 'to dispose of

> and make all needful rules and regulations respecting the territory or other property of the United States,' *has the exclusive right to control* and dispose of, as it has with regard to other property of the United States; and no state can interfere with this right, or embarrass its exercise. U.S. v. Gratiot, 14 Pet. 526; Poilard v. Hagan, 3 How. 224; Irvine v. Marshall, 20 How. 558, 563; Gibson v. Chouteau, above cited." (Emphasis supplied)
>
> —*Van Brocklin* v. *Anderson,* 117 U.S. 151, 6 S. Ct. 670, 679 (1886).

The argument that the establishment of this Ryukyuan Court was inherent in the President's power to conduct foreign affairs is unavailing and the court below in 1955 held:

> ". . . this is so notwithstanding the relation of the subject to *the Executive's power over the conduct of foreign affairs,* for it too, *'like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution.' United States* v. *Curtiss-Wright Export Corp.,* 229 U.S. 304, 320, 57 S. Ct. 216, 221, 81 L. Ed. 255; *Bauer* v. *Acheson,* (D.C.D.C.), 106 F. Supp. 445, 451."
>
> —*Shachtman* v. *Dulles,* 96 U.S. App. D.C. 287, 225 F. 2d 938, 940 (C.A.D.C. 1955). (Emphasis supplied.)

Thus, C.A. Ordinance 144 is, in fact, born solely of this unlawful attempted treble delegation by the President of alleged "powers" which the President himself does not possess under the Constitution of the United States and, therefore, could not delegate.

(d) C.A. Ordinance 144 could not be validly issued

Assuming (without conceding) that Executive Order No. 10,713 is valid, the High Commissioner still had no power to issue or maintain in force ordinances which declared certain acts or omissions to be crimes. The delegation to a regulatory or Executive Agency (as the Defense Department) of the power to declare acts or omissions as criminal conduct has been struck down again and again. As early as 1893, in *United States* v. *Eaton,* 144 U.S. 677, 12 S. Ct. 764 (1892), this Court said:

> "It is necessary that a sufficient statutory authority should exist for declaring any act or omission a criminal offense . . . Regulations prescribed by the president and by the heads of departments, under authority granted by Congress, may be regulations prescribed by law, so as lawfully to support acts done under them, and in accordance with them, and may thus have, in a proper sense, the force of law; but it does not follow that a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense."
>
> —at p. 767.

In 1920, this Court in *United States* v. *Standard Brewery,* 251 U.S. 210, 40 S. Ct. 139, held:

> "Administrative rulings cannot add to the terms of an act of Congress and make conduct criminal which such laws leave untouched."
>
> —at p. 140.

And, inasmuch as the U.S. Civil Administration Superior Court is a court established by Federal au-

thority, the language of this Court in *Viereck* v. *United States,* 318 U.S. 236, 60 S. Ct. 561, is apposite:

> "One may be subjected to punishment for crime in the *federal* courts only for the commission or omission of an act defined by statute, or by regulation having legislative authority, and then *only if punishment is authorized by Congress.*" (Emphasis supplied.)
>
> —at p. 563.

In *United States* v. *Laub,* 385 U.S. . . . ; 87 S. Ct. 574, 17 L. Ed. 2d . . . (1967), Laub and others were indicted under 18 U.S.C., Sec. 371 for conspiring to violate 8 U.S.C., Sec. 1185, the conspiracy consisting of recruiting and arranging the travel to Cuba of 58 American citizens, whose passports, although otherwise valid, were not specifically validated for travel in Cuba. 18 U.S.C., Sec. 1185 (Sec. 215(b) of the Immigration and Nationality Act of 1952) made it unlawful for any citizen of the United States to depart from, or enter, or attempt to depart from, or enter the United States unless he bears a valid passport during a war or during a national emergency proclaimed by the President. President Truman proclaimed an emergency and travel was restricted to Cuba. The Department of State issued a notice that passports shall not be valid for travel to, or in Cuba unless specifically endorsed for such travel under the authority of the Secretary of State. The Department of State contended that travel in violation of this area restriction is unlawful, and this was the basis for the indictment. The District Court dismissed the indictment because the statute did not make criminal forbidden travel in Cuba. This Court affirmed, rejecting the Government's contention that the statute is broad enough to

encompass departures for geologically restricted areas and a violation of such travel restrictions was a criminal offense under the statute. In affirming the District Court, this Court held:

> "We begin with the fact, conceded by the Government, that "Section 215 (b) does not, in so many words, prohibit violations of area restrictions; it speaks, as the district court noted in the *Laub* case * * * in the language of 'border control statutes regulating departure from and entry into the United States.'" Brief for the United States, p. 11. Nevertheless, the Government requests us to sustain this criminal prosecution and reverse the District Court on the ground that somehow, the text is broad enough to encompass departures for geographically restricted areas * * *." Ibid. We conclude, however, that in this criminal proceeding, the statute cannot be applied in this fashion."
>
> —at pp. 577-578.

In the companion case of *Travis* v. *United States*, 385 U.S. . . . ; 87 S. Ct. 583, 17 L. Ed. 2d . . . , this Court followed *Laub* and reversed a conviction, which had been affirmed on appeal, involving forbidden travel to Cuba. As Congress had not made travel to Cuba criminal, the regulations and efforts of the Executive Department to make restricted travel punishable criminally were struck down by this Court. In following *Laub*, this Court held:

> "As our decision in *Laub* determines, if petitioner in fact had a valid passport, and the gravaman of the Government's accusation under § 215 (b) were that her passport was not valid for travel to Cuba, this conviction could not stand. We have today held that area restrictions upon the use of

> an otherwise valid passport are not criminally enforceable under § 215(b). Because the Government did not allege, and introduced no proof, that petitioner did not bear a valid passport on each of the occasions on 'which she departed for Cuba, via Mexico, our decision in *Laub,* supra, requires that her conviction be reversed."
>
> —at pp. 583-584).

It is respectfully submitted that the Military Ordinances with the violation of which Petitioner was criminally charged, are unconstitutional and void because they were issued by agencies that—under the Constitution—had no power or authority to promulgate them, and they certainly lacked power to impose *criminal* penalties.

(e) Even if President Eisenhower had power to legislate for the Ryukyuan Islands, USCAR Proclamation No. 8 establishing the U. S. Civil Administration Superior Court and the ordinances and laws with the violation of which petitioner was charged, are void in that there was an unlawful delegation of legislative power

Assuming (without conceding) that somewhere in the Constitution authority could be found under which President Eisenhower could have exercised legislative power over the Ryukyuan Islands, the President nevertheless would not be permitted to abdicate or to transfer to others such legislative functions. Executive Order No. 10,713 delegates authority to others, including the High Commissioner of the Ryukyuan Islands and certain bodies or agencies created under the Executive Order to legislate for the Ryukyuan Islands. The Executive Order delegates to others the power to establish systems of courts in the Ryukyuan Islands. The Executive Order, however, does not define or pre-

scribe what violations are to be considered criminal and does not provide for the punishment of such violations.

In order for a delegation of legislative power to be valid, the enabling act must prescribe and define controlling standards, because legislative power cannot be abdicated. In *A.L.A. Schechter Poultry Corporation* v. *United States,* 294 U.S. 495, 79 L. Ed. 1570, 55 S. Ct. 837, a live poultry code promulgated under Section 3 of the National Industrial Recovery Act was held invalid, notwithstanding that this section authorized the President to approve the code of fair competition, which he did by Executive Order. The Code provided for punishment for violators of the rules of the Code. Several corporations and individuals were indicted for violating this Code of Fair Competition, and were convicted. The convictions were affirmed on appeal. In reversing these convictions, this Court held that the statute in question and the actions of the President thereunder were invalid. They were held to be illegal attempts to exercise illegally delegated legislative power.

In *Carter* v. *Carter Coal Co.,* 298 U.S. 238, 80 L. Ed. 1160, 56 S.C. 855, the Supreme Court reversed certain convictions under the Bituminous Coal Conservation Act of 1935, which delegated the power to others to fix maximum hours of labor of miners, together with the power to fix minimum wages. In holding these attempted delegations of power by Congress invalid, this Court said:

> "The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in its most obnoxious form; for it is not even delega-

tion to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business. * * * The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment that it is unnecessary to do more than refer to decisions of this court which foreclose the question. Schechter Poultry Corp. v. United States, 295 U.S. 495, at page 537, 55 S. Ct. 837, 79 L. Ed. 1570, 97 A.L.R. 947; Burbank v. Richmond, 226 U.S. 137, 143, 33 S. Ct. 76, 57 L. Ed. 156, 42 L.R.A. (N.S.) 1123; Washington ex rel. Seattle Trust Co. v. Roberge, 278 U.S. 116, 121, 122, 49 S. Ct. 50, 73 L. Ed. 210, 86 A.L.R. 654."

—at p. 873.

The decision below conflicts with another holding of the court below, that portions of the Emergency Relief Appropriation Act of 1935 were unlawful delegations of legislative power to the President, in *Franklin T.P. in Somerset County, N.J.* v. *Tugwell,* 66 App. D.C. 42, 85 F. 2d 208 and that:

"In the present case the question of constitutionality can be determined from the face of the act. Consequently, no findings of fact could affect the proper determination of this question.

"The Court in the Schechter case, in discussing the limitations upon the power of the Congress to delegate legislative power, then said:

'But Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry. * * *

'The act provides for the creation by the President of administrative agencies to assist

him, but the action or reports of such agencies, or of his other assistants—their recommendations and findings in relation to the making of codes—have no sanction beyond the will of the President, who may accept, modify, or reject them as he pleases. * * *

'Section 3 of the Recovery Act (15 U.S.C.A., Sec. 703) is without precedent. It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorized the making of codes to prescribe them. For that legislative undertaking section 3 sets up no standards aside from the statement of the general aims of rehabilitation, correction and expansion described in section 1. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power.'

"Turning now to the Emergency Relief Appropriation Act of 1935, and examining it in the light of the principles laid down in the decisions in the Panama and Schechter cases, it appears that, insofar as this case is concerned, there is a clearly unconstitutional delegation of legislative power."

—at p. 218.

The failure of the President to define the standards under which punishments are to be imposed upon violators of ordinances and other enactments promulgated

by others than the President, and the failure of the President to make such enactments criminal, if the failure of the President to make such enactments criminal, if the President has such power, which is denied, renders Executive Order No. 10,713 invalid as an unconstitutional attempt to delegate legislative power.

II. PETITIONER WAS ENTITLED TO THE PROTECTION OF THE CONSTITUTION, AND PARTICULARLY ARTICLE III AND THE FIFTH AND SIXTH AMENDMENTS THEREOF.

A. The Constitution Applies to the United States Civil Administration Court

Assuming, for the purpose of argument only, that the Ryukyuan Court is legally established, it must be conceded that it is a creation of the United States and such power and jurisdiction as it has must stem from and, at the same time, must be limited by the Constitution of the United States. It was not established under Article III, Section 1 of the Constitution, reading in part as follows:

> "SECTION 1. The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts *as the Congress* may from time ordain and establish." (Emphasis supplied.)

Congress did not establish this Ryukyuan Court.

Assuming, *arguendo,* that the President had the authority to create this Ryukyuan Court through Respondent, the Secretary of Defense, and the High Commissioner, such power and authority as that Court has must be derived solely from the powers of the President and, therefore, must be limited by the Constitutional authority and powers reposing in the President.

In *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 57 S. Ct. 216 (1936), the defendant was indicted on a charge of conspiring to sell in the United States machine guns to Bolivia, in violation of a Joint Resolution of *Congress* and the provisions of a proclamation *issued* pursuant thereto by the President.

This Court sustained the President's proclamation, but noted:

> "It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of *legislative power,* but with such an authority plus the very delicate, plenary and *exclusive power of the President as the sole organ of the Federal government in the field of international relations—a power* which does not require as a basis for its exercise an act of Congress, but which, of course, *like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution.*" (Emphasis supplied.)
>
> —at pp. 319, 320; 221.

The two bases urged below concerning our contention that Petitioner is entitled to the protection of Article III of the Constitution and the Fifth and Sixth Amendments are:

(1) The acts or omissions giving rise to the charges were committed outside the United States in *enemy occupied* territory, or

(2) The case arose from the President's powers over the land or naval forces or "the militia when in actual service in time of war or public danger."

Neither of these arguments are of any avail here. The United States was the plaintiff in the USCAR Court;

the Court is The UNITED STATES Civil Administration Superior Court; and the Ordinances were issued by a United States Army Officer under delegated authority of the President.

Any attempt to rely on the "insular cases" (*Balzac* v. *People of Puerto Rico,* 285 U.S. 298, 42 S. Ct. 343 (1922); *Pugh* v. *U. S.,* 212 F. 2d 761, C.A. 9 (1953), and *Hatchett* v. *Federal Government,* 212 F. 2d 767) is equally misplaced. Judge Gasch so held in the instant case, *Rose* v. *McNamara,* 252 F. Supp. 111, 113.

First of all, the defendants in the "insular cases" were *not* American citizens. Secondly, the Supreme Court in the *Covert* case, involving American citizens, expressly held:

> "The 'insular cases' can be distinguished from the present cases in that they involved the power of Congress to provide rules and regulations to govern temporary territories with wholly dissimilar traditions and institutions whereas here the basis for governmental power is American citizenship."
>
> —*Reid* v. *Covert,* supra, at p. 1229

Furthermore, Okinawa cannot be considered as "*enemy occupied*" land or "territory" within Article IV, Section 3, Clause 2 of the Constitution, because the island is not "occupied", it has been transferred to the United States. Congress has not acted with regard to it and it is not Congress' power with which we are now concerned.

This Court's attention is called to the fact that the United States District Court for the District of Columbia upheld the arrest and extradition of a United States citizen on a fugitive warrant for removal to the

continental United States, on the theory that Okinawa was within the special maritime and territorial jurisdiction of the United States as such is defined in Title 18, U.S.C., Sec. 7, a position which was strongly and successfully urged by defendant's predecessor in that Court. And that Court (Judge Edward M. Curran) in *Hitt* v. *McElroy,* Habeas Corpus No. 40-58, so held.

Thus, the Government having urged that Okinawa is within the jurisdiction of the United States and that the District Court below must issue a fugitive complaint, which that Court did, it is somewhat futile to urge that the Ryukyuan Islands are, and persuade the Court below to hold that they are "foreign occupied lands" in which the rights of American citizens are not protected by the Constitution and where United States officials under the direction, supervision and control of the President may, with impunity, disregard the most fundamental safeguards that the Constitution provides for American citizens.

B. Petitioner Was Entitled to the Protection of the Fifth and Sixth Amendments

It is clear that this case is not within the power of the President over the land or naval forces to act in time of war or public danger. And, since Petitioner is a civilian, there appear to be no grounds whatever by which Article III and the Fifth and Sixth Amendments should suddenly have become inoperative with regard to her.

The Court below seems to have held that this United States CIVIL Administration Court is a Military Court, being established by the High Commissioner (a General of the United States Army) under the authority of the Secretary of Defense; or that the USCAR Court

acts somewhat like a Consular Court in a foreign territory, and therefore it is not bound by the guaranties and protection that Article III and the Fifth and Sixth Amendments bestow upon American citizens.

None of these arguments avail here, since Petitioner is not a member of the Armed Forces, and is not subject to a Military Code of Justice and is protected by the Constitution.

As early as 1888, this Court held that it was the purpose of the Constitution to secure indictment by grand jury and trial by petit jury for United States citizens, even if the alleged crime was committed "out of any States". The crime occurred in the Districtof Columbia. This Court held in *Callan* v. *Wilson,* 127 U.S. 560, 3 S. Ct. 1201 (1888):

> "In the draft of a constitution reported by the committee of five on the 6th of August, 1787, in the convention which framed the constitution, the fourth section of article 11 read that 'the trial of all criminal offenses (except in cases of impeachment) shall be in the states where they shall be committed, and shall be by jury.' 1 Elliott, Deb. (2nd Ed.) 262."

But the article was, by unanimous vote, amended so as to read:

> "The trial of all crimes (except in cases of impeachment) shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, then the trial shall be at such place or places as the legislature may direct." Io. 300. The object of thus amending the section, Mr. Madison says, was "to provide for trial by jury of offenses committed out of any state." 3 Mad.

> Papers, 144. In *Reynolds* v. *U. S.*, 98 U.S. 154, it was taken for granted that the sixth amendment of the Constitution secured to the people of the territories the right of trial by jury in criminal prosecutions; and it had been previously held in *Webster* v. *Reid*, 11 How. 437, 460, that the seventh amendment secured to them a like right in civil actions at common law."
>
> —at p. 1304.

And, as this Court held:

> "Except in that class or grade of offenses called 'petty offenses', which, according to the common law, may be proceeded against summarily in any tribunal legally constituted for that purpose, the guaranty of an impartial jury to the accused in a criminal prosecution, conducted either in the name or by or under the authority of the United States, secured to him the right to enjoy that mode of trial from the first moment, and in whatever court, he is put on trial for the offense charged. In such cases, a judgment of conviction, not based upon a verdict of guilty by a jury, is void."
>
> —at p. 1307.

As recently as 1957, in *Reid* v. *Covert*, *supra*, this Court made it clear that the Constitution protects the citizens of the United States, whether they are *within* the United States or abroad. This Court held:

> "At the beginning we reject the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights. The United States is entirely a creature of the Constitution. Its power and authority have no other source. It can only act in accordance with all the limitations imposed by the Constitution. When the Government reaches out to punish a citizen who is abroad,

the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and liberty should not be stripped away just because he happens to be in another land."

—at pp. 5-6; 1227.

Mr. Justice Frankfurter, concurring, held:

"Governmental action abroad is performed under both the authority and the restrictions of the Constitution—for example, proceedings before American military tribunals, whether in Great Britain or in the United States are subject to the applicable restrictions of the Constitution."

—at p. 56; 1251.

Mr. Justice Whittaker and Mr. Justice Stewart (neither participating in the *Covert* case) authoritatively stated the Rule of *Covert* in *McElroy* v. *United States,* 361 U.S. 234, 80 S. Ct. 331, to be:

"Our recent decision in Reid v. Covert . . . makes clear that *the United States Constitution extends beyond our territorial boundaries and reaches* to and applies within all foreign areas where jurisdiction is or may be exercised by the United States over its citizens—that *when the United States proceeds against its citizens abroad 'it can only act in accordance with all the limitations imposed by the Constitution'.*" [Emphasis supplied]

—at p. 317.

That Article III and the Fifth and Sixth Amendments were the real object of this Court's concern in *Covert* appears from the following language:

"Looming far above all other deficiencies of the military trial, of course, is the absence of trial by

jury before an *independent judge* after an indictment by a grand jury." [Emphasis ours].

—at p. 37; 1241.

Covert expressly overruled the 1891 concept of *Ross* v. *McIntyre,* 140 U.S. 453; 11 S. Ct. 897 (1891) which upheld the powers of Consular courts. Mr. Justice Black wrote:

"The Ross case is one of those cases that cannot be understood except in its peculiar setting; even then, it seems highly unlikely that a similar result would be reached today.

* * * * *

The Ross approach that the Constitution has no applicability abroad has long since been directly repudiated by numerous cases. That approach is obviously erroneous if the United States Government, which has no power except that granted by the Constitution, can and does try citizens for crimes committed abroad. Thus the Ross case rested, at least in substantial part, on a fundamental misconception and the most that can be said in support of the result reached there is that the consular court jurisdiction had a long history antedating the adoption of the Constitution. The Congress has recently buried the consular system of trying Americans. We are not willing to jeopardize the lives and liberties of Americans by disinterring it. At best, the Ross case should be left as a relic from a different era."

—at pp. 10, 12; 1227, 1228.

Covert concerned a capital offense. *Kinsella* v. *Singleton,* 361 U.S. 234, 80 S. Ct. 297 (1960), presented the question whether *Congress* could constitutionally authorize trial by court-martial of civilian de-

pendents for non-capital offenses committed overseas in peacetime. This Court held that it could not.

Grisham v. *Hagan,* 361 U.S. 278, 80 S. Ct. 310 (1960), presented the question whether *Congress* could constitutionally authorize trial by court-martial for a capital crime allegedly committed by a civilian employed overseas in peacetime by the United States Army. This Court held it could not.

In *McElroy* v. *United States,* 361 U.S. 234, 80 S. Ct. 311 (1960), this Court held that *Congress* could not constitutionally authorize trial by court-martial for a non-capital crime committed by a civilian employed overseas by the Armed Forces in peacetime. Following the rationale of *Covert, Grisham* and *Singleton,* this Court held:

> "The recognized authority on court-martial jurisdiction, after a careful consideration of all the historical background, concluded: 'That a civilian, entitled as he is, by Article VI of the Amendments to the Constitution, to trial by jury, cannot legally be made liable to the military law and jurisdiction, in time of peace, is a fundamental principle of our public law . . .'"
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> —at p. 308, quoted from Winthrop, Military Law and Precedents (2d Ed. 1896) 143.

Covert, McElroy, Grisham and *Singleton*—all are cases arising before a Court that was established by Congress, under the Uniform Code of Military Justice, duly adopted by Congress. The cases all involved defendants whose activities and occupations were closely bound up with the Military and its activities in foreign lands. This Court held that the Constitution including the Bill of Rights completely protected and applied

to these defendants; that they were entitled to prosecution in an Article III Court by grand jury indictment and to trial by jury.

In the case at bar, the United States Civil Administration Court was established by the President. The criminal laws involved were promulgated by authority which was (we say, invalidly) delegated by the President. Complainant, Investigator, Prosecutor, Law, Procedure, and Appellate Court—all were established and controlled by the same (one man's) authority. Petitioner is an American citizen, and a civilian. She was not employed by the Army. If this Court struck down the Military's power to try *Covert* and *Singleton* without a jury, *a fortiori,* Petitioner could not be tried legally with disregard of Article III and the Fifth and Sixth Amendments. What this Court said in *Covert* (where Congress, at least, had written the law), applies to this case:

> "If the President can provide rules of substantive law as well as procedure, then he and his military subordinates exercise legislative, executive and judicial powers with respect to those subject to military trials. Such blending of functions in one branch of the Government is the objectionable thing which the draftsmen of the Constitution endeavored to prevent by providing for the separation of governmental powers."
>
> —*Reid* v. *Covert,* supra, at p. 1242.

The United States District Court for the District of Columbia followed the mandate of this Court in *Covert, McElroy, Grisham* and *Singleton* in its decisions in *Ikeda* and *Nicholson,* supra. The Court below did not.

The decision below conflicts with *United States* v *Mason,* 344 F.2d 673, (CCA 2, 1965). *Mason* involved a Treaty with Spain. In *Mason,* an alleged deserter

from a Spanish warship was arrested and ordered deported by the United States in New York pursuant to the 1903 Treaty with Spain respecting deserting seamen. The seaman was arrested without a warrant by United States naval officers who assumed the responsibility of determining whether the treaty applied and of returning the seaman to the Spanish authorities. Judge Thurgood Marshall of the Second Circuit Court of Appeals in a learned opinion, reviewed the constitutional problems involved and stated that authority to enforce the treaty must be conferred by law and is not to be inferred even though it was natural for the Navy to attempt to enforce the treaty under the circumstances as it involved an admitted deserter from the Spanish Navy. In holding that the Navy's detention of the seaman was unlawful, and in reversing the District Court's dismissal of the Petition for a Writ of Habeas Corpus (reported in 232 F. Supp. 102) Judge Marshall held:

> "But more fundamentally, even it an individual admitted all the facts required by the Treaty, and no legal issues were present in determining whether the Treaty was operative, this would not clothe the INS or the Navy with legal competence to execute the Treaty by arresting and imprisoning the individual. The constitutional guarantee of due process of law requires that all coercive action of federal officials be authorized in law, and this authority cannot be stitched out of an individual's admission of certain facts that would, according to a treaty, entitle "competent national or local authorities" to take such action. Competence to enforce that treaty must be conferred on the federal officials by law, and no such competence has been conferred on either the INS or Navy."
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> —at pp. 681, 682.

III. THE PETIT JURY WAS NOT MADE UP ENTIRELY OF AMERICAN CITIZENS AS REQUIRED BY LAW

The petit jury in the case below included among its members three Filipinos, one Korean, one Chinese and one Ryukyuan citizen. (App. "C", infra p.)[3] Change Order 19, adopted 8 March, 1963, amending C.A. Ordinance No. 144, emanating from the High Commissioner, a United States General, authorized in the USCAR Court indictment and trial by jury out of concern for the rulings in *Nicholson* and *Ikeda*. Neither this Order nor the Rules of Criminal Procedure enacted by the USCAR Court require that petit jurors be United States citizens. Such a jury, on which six foreigners sat as jurors, is contrary to law. USCA, Title 28, Sec. 1861 requires that Federal jurors be comprised only of citizens of the United States. Petitioner was denied, as a United States citizen, a trial by a jury of her peers, i.e., United States citizens, as six of the jurors were foreigners. The presiding judge was not a judge appointed by the President and confirmed by the Senate, but was an Army employee, as are the appellate judges who at times also sit as trial judges in the USCAR Court. Such a trial court and jury do not meet the constitutional requirements of Article III and the Fifth and Sixth Amendments. Certainly such judges are not *independent* judges and certainly are not Article III judges or legislative judges. They were not au-

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[3] The taxes claimed have been paid by the actual operator of the Tea House, August Moon and Respondent is trying to refund these taxes in order to maintain Petitioner's conviction! (App. "C", p. 46a-47a)

thorized by law or assignment to preside over a felony trial in a United States Court of an American citizen.

In the case below, the United States of America was the plaintiff; the United States claimed a military ordinance had been violated, and the trial was held in a United States Court; a criminal penalty for the violation of this ordinance was imposed on an American citizen in this Federal Court acting under delegated authority from the President of the United States. The Court below brushed aside our contention that Congress requires that all Federal jurors be citizens of the United States, as provided for in 28 U.S.C., Sec. 1861 (1964), on the theory that this statute relates only to United States District Courts. We do not so read the statute. The statute provides for "qualifications" of *Federal* jurors and restricts *Federal* jurors to "citizens of the United States."

We submit the petit jury which convicted Petitioner, admittedly being not made up exclusively of citizens of the United States, was illegally constituted, which renders the verdict of that jury void.

The argument of the Court below (footnote 4) that the offense involved was not one against the United States, is specious and untenable, and a reading of the indictment in this case will demonstrate that the "crime" here involved is against the United States.

The decision below conflicts with *Ex Parte White,* 66 F. Supp. 982 (D.C., Hawaii, 1944). In *White,* during the course of the second World War and after the battle of Midway, an invasion of Hawaii was feared. The Governor of Hawaii delegated to the Commanding General all of his authority. The Military Governor proceeded to try an American in a Pro-

vost Court, contrary to constitutional rights conferred by the Fifth and Sixth Amendments, including (among other things) a denial of a right to trial by jury in a court presided over by a United States Judge. The District Court held that the trial of White in a Provost Court under orders of the Military Governor of Hawaii, issued in time of war under authority of the President, deprived White of his constitutional rights under the Fifth and Sixth Amendments. The Court further held that the giving of a military trial to White was not justified; and the Provost Court could not deny him his constitutional rights as guaranteed by the Fifth and Sixth Amendments, including a trial by jury. Accordingly, the District Court granted a Petition for a Writ of Habeas Corpus and ordered White discharged from the custody of the Military Governor and his bond discharged. The District Court, in discharging White from the Military Governor's custody, held:

> The question of White's guilt or innocence of the charge is not involved in this case.
>
> It is incumbent upon courts, especially United States Courts—"* * * in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty, * * *"
>
> War does not suspend the Constitution, or any part of it. It is the supreme law of the land at all times. Neither generals, governors, nor courts are exempt from its provisions at any time. The Federal Government's power to wage war and to wage it successfully involves to be sure the rule that in wartime individual rights must yield in the face of necessity—and to the extent necessary—to the nation's innate and paramount power of self preservation.

That White may be guilty of violating the Territorial statute defining the offense of embezzlement and prescribing the penalty therefor or that military courts mete out military justice at an accelerated pace, unhampered by the Bill of Rights, are not reasons for ignoring the mandates of the Fifth and Sixth Amendments.

"Constitutional safeguards for the protection of all who are charged with offenses are not to be disregarded in order to inflict merited punishment on some who are guilty."

"Military jurisdiction over a civilian unconnected with the armed forces must even during war be justified in point of law. What then is the justification for denying to White his constitutional rights?

Upon the record—and it permits of no equivocation—the assigned reason is that the Governor of Hawaii delegated to the General all of the "powers normally exercised by the judicial officers" of the Territory, which powers the General exercised in the White case under the name and style of "Military Governor of Hawaii."

Of course Hawaii has never lawfully had either a military government or a "Military Governor," even though it has had both in fact. Such a government and title are lawful only with respect to conquered foreign territory. Lacking the factual basis in Hawaii, United States of America, there is nothing then in the erroneously used title of "Military Governor" which lends support to the situation in the White case. The tinsel of the title here tends to obscure by justifiable American irritation the real question.

The precise and only question is, did the Governor of Hawaii have any judicial power to delegate? If not, the General's acts in reliance thereon were null and void and effected in the White

case a denial of his rights under the Fifth and Sixth Amendments. Inferred Presidential approval would avail naught."

—at pp. 986-987.

CONCLUSION

For the reasons stated in this Petition, Petitioner prays that a Writ of Certiorari issue to review the erroneous judgment of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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Dated: June 20, 1967

APPENDIX "A"

Opinions Below

Memorandum

(District Court)

This cause came on for hearing on plaintiff's complaint under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq. Plaintiff has moved for summary judgment, and the Government has moved for judgment on the pleadings.

It appears that the facts are as follows: Plaintiff, a native Okinawan, was married to a United States citizen and, thus, has become a citizen of this country. She is the proprietress of a business known as the Tea House August Moon on the island of Okinawa. The pleadings reflect that plaintiff was convicted of violating an organic tax law promulgated by the high Commissioner of the Ryukyu Islands. After plaintiff's indictment by a grand jury, she was tried and convicted by a petit jury and the court sentenced her to pay a fine of $8,000. Her appeal was duly taken to and denied by the United States Civil Administration Appellate Court for the Ryukyu Islands. No provision is made for further appellate action by her. There is no dispute as to these material facts.

Plaintiff's counsel seeks a declaration that the above-described proceedings are invalid on the ground that the courts of the Ryukyu Islands, as presently constituted under an executive order of the President,[1] have no criminal jurisdiction over a United States citizen. The specific relief sought by the complaint is a declaration that the conviction is null and void.

Following the Treaty of Peace between the United States and Japan, jurisdiction over the Ryukyu Islands was estab-

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[1] 22 Federal Register 4007 et seq.

lished under the interim control of the United States pending ultimate transfer to a trusteeship as provided by the United Nations Charter. By the executive order heretofore mentioned, courts essentially comparable to those established under the jurisdiction of the United States in its states and territories have been established in the Ryukyu Islands. The current criminal practice of these courts includes grand juries and petit juries.[2] The judges of these courts are appointed pursuant to power delegated by the President.

Plaintiff takes the position that the failure of Congress to legislate in this area invalidates this system of jurisprudence established by the executive order as it applies to a United States citizen. Concomitant with this assertion is a denial of Presidential authority to submit a United States citizen to criminal jurisdiction in a court established by executive order.

At the outset, the Court recognizes that the absence of congressional legislation is not in and of itself controlling, for the exigencies of the international situation may be such that it would be inappropriate for Congress to pass legislation concerning the Ryukyu Islands as if they were territorially a part of the United States. It has long been recognized that in the field of foreign relations that the important, complicated, delicate and manifold problems incident thereto are confided solely to the judgment and discretion of the President.[3] During the temporary occupation of these Islands, it would be singularly inappropriate to expect Congress to establish a permanent judicial setup comparable to that which exists in islands under the perma-

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[2] See discussion of *In re Nicholson*, H.C. 141-61, *infra*.

[3] *United States* v. *Curtiss-Wright Export Co.*, 299 U.S. 304, 319.

nent control of the United States.[4] This situation is not novel. In *Madsen* v. *Kinsella,* 343 U.S. 341, the Supreme Court upheld the jurisdiction and authority of similar courts which were established by an executive order in the United States occupied zone of Germany. In Madsen, the petitioner was convicted of murder in violation of the German Criminal Code in a court known as the United States Court of the Allied High Commission for Germany. As in the instant case, the offense and trial took place after the cessation of hostilities and during a period of military occupation. Plaintiff's counsel contends that the jurisdiction of such a court expires upon the cessation of hostilities. It is clear that in *Madsen* the Supreme Court specifically repudiated this argument.

> "In the absence of attempts by Congress to limit the President's power, it appears that, as Commander-in-Chief of the Army and Navy of the United States, he may, in time of war, establish and prescribe the jurisdiction and procedure of military commissions, and of tribunals in the nature of such commissions, in territory occupied by Armed Forces of the United States. *His authority to do this sometimes survives cessation of hostilities.*"[5]

The jurisdiction of such courts has been repeatedly upheld by the Supreme Court.[6]

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[4] Chief Justice Marshall, describing the power and origin of legislative courts of the United States as distinguished from Article III courts, in *American Insurance Co.* v. *Canter,* 26 U.S. (1 Pet.) 685, clearly stated that the power to establish legislative courts relates only to territory belonging to the United States. *Id.* at 690-91.

[5] 343 U.S. at 348 (emphasis supplied).

[6] *Duncan* v. *Kahanamoku,* 327 U.S. 304; *Santiago* v. *Nogueras,* 214 U.S. 260; *Neely* v. *Henkel,* 180 U.S. 109; *Mechanics & Traders Bank* v. *Union Bank,* 22 Wall. 276; *The Grapeshot,* 9 Wall. 129; *Cross* v. *Harrison,* 16 How. 164.

Plaintiff's counsel relies upon *Reid* v. *Covert*, 354 U.S. 1, wherein the Supreme Court held that trial of a United States citizen by a military court which did not provide certain constitutional safeguards was unconstitutional. Mr. Justice Black repudiated reliance on the "Insular Cases" which arose at the turn of the century.[7] Similarly, this Court has previously had occasion to examine the court system of the Ryukyu Islands. In the case of *In re Nicholson*, H.C. 141-61, Judge McGarraghy found that the denial of a jury trial to a United States citizen, tried before the courts of the Ryukyu Islands, violated the petitioner's constitutional rights. It is apparent that the court procedures which resulted in Judge McGarraghy's decision have since been changed. In the instant case, plaintiff was accorded a grand jury and a petit jury; she had the benefit of counsel throughout the proceedings; and the record in no way reflects a denial of constitutional rights resulting from the operation of the courts of the Ryukyu Islands.[8]

Although plaintiff did not rely on it, *Bowman* v. *United States*, 260 U.S. 94, raises a related issue. In *Bowman*, petitioner and others were convicted in the United States District Court for the Southern District of New York for the violation of a penal provision of the United States Code. Plaintiff might have argued that she was entitled to a trial in a Federal court similar to the trial accorded Bowman.[9] However, in *Bowman*, the Supreme Court recognized that other forums would have jurisdiction over Bowman.

> "Clearly the *locus* of this crime as intended by Congress is in a foreign country and certainly the foreign country in which he discharges his official duty could

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[7] The leading case was *In re Ross*, 140 U.S. 453.

[8] Cf. *Wilson* v. *Girard*, 354 U.S. 524.

[9] The District Court for the Southern District of New York was the first port of entry.

not object to the trial in a United States court of a United States consul for crime of this sort committed within its borders." [10]

It is noteworthy that, whereas Bowman was found guilty of violating a provision of the United States Code, plaintiff herein was found guilty of violating an organic law intended for the use and benefit of the government established pursuant to the Treaty with Japan.

The Court finds that the system of courts of the Ryukyu Islands, as they currently operate, do not possess unconstitutional features.[11] The Court further finds that these courts were validly constituted by executive order of the President and have jurisdiction over a United States citizen as to crimes occurring within the Ryukyu Islands.[12] Accordingly, plaintiff's motion for summary judgment is denied and defendant's motion for judgment on the pleadings is granted.

Counsel will prepare an appropriate order.

/s/ OLIVER GASCH
Judge

March 18, 1966.

Order

This cause having come on for hearing on motion of the plaintiff for summary judgment and on motion of the defendant for judgment on the pleadings, and counsel having been heard and the Court being fully advised in the premises and being of the opinion that plaintiff's motion

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[10] 260 U.S. at 99; Madsen v. Kinsella, supra.

[11] Cf. *Reid* v. *Covert, supra.*

[12] *Madsen* v. *Kinsella, supra.*

for summary judgment should be denied and defendant's motion for judgment on the pleadings should be granted.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

(1) That the motion of plaintiff for summary judgment be and the same is hereby denied;

(2) That defendant's motion for judgment on the pleadings be and the same is hereby granted;

(3) That the complaint be and the same is hereby dismissed.

/s/ OLIVER GASCH
Judge

March 28, 1966.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Appeal from the United States District Court
for the District of Columbia

Decided March 23, 1967

Mr. Stuart H. Robeson, with whom *Mr. Roger E. Brooks* was on the brief, for appellant. *Mr. Warren E. Magee* also argued for appellant. *Mr. Hans A. Nathan* also entered an appearance for appellant.

Mr. Walter H. Fleischer, Attorney, Department of Justice, with whom *Acting Assistant Attorney General Doolittle, Messrs. David G. Bress,* United States Attorney, and *Morton Hollander,* Attorney, Department of Justice, were on the brief, for appellee. *Mr. John C. Eldridge,* Attorney, Department of Justice, also entered an appearance for appellee.

Before BAZELON, *Chief Judge*, WILBUR K. MILLER, *Senior Circuit Judge*, and MCGOWAN, *Circuit Judge*.

MCGOWAN, *Circuit Judge:* Appellant, a naturalized American citizen residing on the island of Okinawa in the Ryukyu Islands, was convicted of evading income taxes imposed by a local taxing statute. Her trial was had before a jury in a local court created as part of the machinery for the government of Okinawa after its capture by the United States in World War II. An appellate court in the same judicial system having denied her appeal, she brought suit against the Secretary of Defense in the United States District Court of the District of Columbia, seeking a declaratory judgment that her conviction was a nullity. The case was heard on appellant's motion for summary judgment and appellee's motion for judgment on the pleadings. The court denied the former and granted the latter, dismissing the complaint. This appeal is from that judgment. We affirm.

I

A variety of arguments have been pressed upon us as to why appellant's conviction in the Okinawan court should be nullified. In their profusion they present a somewhat duplicative aspect[1] which makes it unnecessary to comment upon each one, although we have considered them

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[1] New and additional counsel came into this appeal at the time of the filing of appellant's reply brief shortly before oral argument. This brief contained new points and a restatement of old ones, and was obviously regarded by counsel as the primary vehicle for the presentation of appellant's case. This was as irregular as it was confusing, and the Government's motion to strike was well taken. We have concluded to deny that motion in the interest of advancing this litigation towards a state of repose.

all.[2] The central thrust of appellant's position is directed against the power of the President, as distinct from the Congress, to provide for the governance of Okinawa during the period when the responsibility for doing so resides only in the United States. In order to appraise the claims advanced by appellant, it is necessary to examine how that responsibility came into being and how it has been met.

Okinawa, the largest and most important island in the Ryukyus, was taken from Japan and occupied by the United States during the last battle of World War II. American military government was instituted and continued beyond the cessation of actual hostilities. On April 28, 1952, Japan entered into a Treaty of Peace with the Allied Powers, including the United States. Article 3 of the Treaty dealt with the Ryukyus and provided:

> Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole

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[2] Subsequent to the entry of judgment against her by the district court, the appellant filed a motion to amend the jurisdictional allegations in her complaint and a separate motion to perpetuate testimony. She complains that the district court erred in denying her motions. Each is properly addressed to the discretion of the district court; and, in the circumstances of this case, we see no reason for interfering with its exercise of that discretion. See FED. R. CIV. P. 15(a); 27(b). Appellant also urges that, conceding for the sake of argument that the President had authority to provide as he did for the Ryukyuan Islands, he unlawfully delegated this authority both to the Secretaries of State and Defense and to the High Commissioner of the Islands. Her position manifests a misunderstanding of the nature of the President's office. The President is not required to exereise his authority over the Islands in person, any more than he is required personally to carry out his other responsibilities. Sardino v. Federal Reserve Bank of New York, 361 F.2d 106, 110 (2d Cir.), *cert. denied*, 385 U.S. 898 (1966). See also Russell Motor Car Co. v. United States, 261 U.S. 514, 523 (1923).

> administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands). . . . Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.

[1952] 3 U.S.T. & O.I.A. 3169, 3172-73, T.I.A.S. No. 2490.

Acting pursuant to this treaty, President Eisenhower, on June 5, 1957, issued Executive Order No. 10713, 22 Fed. Reg. 4007. This Order made provision for the continuance of the existing central Government of the Ryukyus, with a legislature directly elected by the people of the Islands. It also provided for a civil administration under the Department of Defense. The head of the civil administration was a High Commissioner designated by the Secretary of Defense. The executive power of the Government was described, however, as vested in a Chief Executive who must be a Ryukyuan and who was to be appointed by the High Commissioner after consultation with the legislature. The Chief Executive and the High Commissioner had, in turn, veto power over the legislature, but, in the case of the High Commissioner, this was severely limited by a 1962 amendment of the 1957 Executive Order. Exec. Order No. 11010, 27 Fed. Reg. 2621.

The legislature was empowered to act with reference to "all subjects of legislation of domestic application." Provision was expressly made for the reporting to the Congress of the United States of all laws enacted by the Ryukyuan legislature.[3] In its treatment of judicial power, the Order differentiated between the Government of the

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[3] "The High Commissioner shall report to the Secretary of Defense all laws enacted by the legislative body of the Government of the Ryukyu Islands and the said Secretary shall report the same to the Congress of the United States." Exec. Order No. 10713, section 7, *supra*.

Ryukyuan Islands, on the one hand, and the civil administration, on the other. Each was to have a system of trial and appellate courts, with both civil and criminal jurisdiction. Criminal jurisdiction over American military personnel and other Americans on the Islands as employees of the United States Government, including their dependents, was generally reserved to the courts of the civil administration; and that reserved jurisdiction expressly extended to penal laws enacted by the Ryukyuan legislature. Judges of the civil administration courts are American citizens in the employ of the United States Government; and they are appointed by the High Commissioner. By an ordinance of the civil administration promulgated in 1963, grand jury indictment and petit jury trial were assured for criminal defendants in the civil administration courts.[4]

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[4] This ordinance reflects the concern of the Supreme Court in Reid v. Covert, 354 U.S. 1 (1957), that American civilians tried for crimes abroad under tribunals of United States provenance shall not be shorn of the protections of the Bill of Rights. Our own District Court on two earlier occasions has held that the absence of the jury system in the civil administration courts in Okinawa invalidated criminal convictions. In re Nicholson, H.C. 141-61, D.D.C., Nov. 19, 1963, and Ikeda v. McNamara, H.C. 416-62, D.D.C., Oct. 19, 1962. Appellant argues in her reply brief that her conviction was invalid because the petit jury that convicted her was not made up exclusively of American citizens. She points in this regard to 28 U.S.C. § 1861 (1964), which requires that federal jurors be citizens. But this statute relates to the United States District Courts, and we are admittedly not dealing here with a court of that kind trying a U.S. Code offense. 18 U.S.C. § 3231 (1964) gives those courts original jurisdiction of "all offenses against the laws of the United States." The law which appellant was found to have violated clearly seems to us not to have been such a law. In addition to this specific allegation, appellant argues generally that she has been deprived of numerous constitutional rights by virtue of her trial in the civil administration courts. Our reading of the record comports, in every respect, with that of the district court judge who found that "the record in no way reflects a denial of constitutional rights resulting from the operation of the courts of the Ryukyu Islands." 252 F. Supp. 111, 113 (D.D.C. 1966).

Appellant operated an Okinawan business known as the Tea House August Moon. She was charged in a grand jury indictment with evading payment of income taxes to the Government of the Ryukyus in the total amount of about $70,000 relating to the period from 1957 to 1962. The tax liability arose under an income tax law passed by the Islands legislature in 1952. Represented by counsel, she was tried by a jury, convicted on one count and acquitted on other counts, and fined $8,000. Again represented by counsel, she appealed to the civil administration appellate court which, with opinion, affirmed the conviction.

II

Amid the welter of contentions pressed upon us by appellant through her two-platoon system of counsel, we are not able to discover any claim that the income tax law itself could not validly be applied to appellant, as distinct from her claim that the tribunal in which she was tried could not validly punish her for its violation. This law, we remind, was not a part of the Internal Revenue Code applicable to American citizens generally. It was a purely local income tax passed by the Ryukyuan legislature and applicable only within the territory subject to its legislative jurisdiction. Thus, without intending any inference as to the precise significance of the difference, we remark that we are not dealing here with an American citizen charged with a U.S. Code crime created by Congress.

What is insisted upon by appellant is that a United States citizen cannot be convicted of crime except in an Article III court set up by Congress.[5] She asserts that

[5] The appellant's argument on this level reduces to the proposition that Reid v. Covert, 354 U.S. 1, 7 (1957), requires that she be tried in an Article III court, presided over by an Article III judge. In so maintaining, she misinterprets the *Reid* decision. While Mr. Justice Black held in *Reid* that Article III, *Section Two,* providing for a jury trial at the location of a crime, is a

the civil administration courts have no such derivation, but are, rather, an arm of the Executive. This characterization seems to us quite accurate, but it does not compel the result appellant seeks.

This issue was dealt with at some length in the opinion of the distinguished District Judge, 252 F. Supp. 111 (D.D.C. 1966); and we need not retrace his steps.[6] He has discussed the very special nature of our relationship with Okinawa, and has appropriately measured Presidential power by reference to it. Okinawa fell into our charge as an incident of our military operations against Japan in the Pacific. Unlike the course we followed after the Spanish-American War in respect of Puerto Rico and the Philippines, we have, vis-a-vis Okinawa, been a most reluctant conqueror indeed. In the Treaty of Peace with Japan we signified our purpose not to hold Okinawa as a United States possession but to put it in due course under the United Nations trusteeship system. More latterly it

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vital constitutional protection which the United States cannot ignore when acting against its citizens abroad, nowhere did he accord the same status to Article III, *Section One*, which gives to Congress the power to establish courts and judicial positions. It is Article III, Section One, upon which appellant laces great reliance in urging that her constitutional rights have been violated, for the record is clear that there have been no violations of her Article III, Section Two rights. We note only that American citizens are tried every day in the District of Columbia for criminal offenses in courts and by judges not deriving from Article III, Section One, although they are accorded Article III, Section Two rights.

[6] The United States Court of Military Appeals has also had occasion to consider the constitutionality of the civil administration courts of the Ryukyus; and this tribunal has approved the use of presidential power to establish these courts because, "in the absence of . . . action by Congress, or previous statute, the responsibility for administering the civilian government of the area remained with the President." United States v. Vierra, 14 U.S.C.M.A. 48, 50 (1963).

has become a stated objective of our international policy to restore Okinawa to Japan.[7]

In the Executive Order issued in implementation of the Peace Treaty, President Eisenhower declared at the outset the amenability of its provisions to action by Congress.[8] Congress has, however, remained content for a decade to allow Okinawa to be governed under the terms of the Order. The reasons for this inaction are not hard to divine. They reflect what appears to be a national consensus that our possession of Okinawa is, by our own design, temporary; and that a wise concept of our foreign relations points in the direction of its being returned, sooner rather than later, to a Japan which has, in no small part because of a host of similar forebearances on our part, become a strong bulwark of the free world in the Far East. In this posture, when our friends in Japan look expectantly to an early restoration of these islands, the assertion by Congress of its authority to create permanent and detailed laws for the government of the Ryukyus would be as impolitic as it would, hopefully,

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[7] President Kennedy, in a statement to accompany Exec. Order No. 11010, March 16, 1962, which amended President Eisenhower's original order setting up the Government of the Ryukyus, declared it to be the public policy of the United States that we recognize the Ryukyus as "a part of the Japanese homeland and look forward to the day when the security of the Free World will permit their restoration to full Japanese sovereignty." 1962 PUBLIC PAPERS OF THE PRESIDENTS 247-48. For similar statements, see 48 DEP'T STATE BULL. 770 (1962) (referring to "the anticipated eventual restoration of these islands to Japanese administration"); 45 DEP'T STATE BULL. 57-58 (1961); 37 DEP'T STATE BULL. 52 (1957).

[8] "*Except as the Congress may otherwise provide by law with respect to the Government of the Ryukyu Islands,* all administrative, legislative and jurisdictional powers reposed in the United States by Article III of the Treaty of Peace with Japan shall be exercised in accordance with this Order." Exec. Order No. 10713, section 1, *supra.* [Emphasis added.]

be short-lived and thereby wasteful of Congressional energies.

The power of the President in the conduct of governmental business of international consequence has traditionally been viewed by the courts as broad. See *United States* v. *Curtiss-Wright Export Co.*, 299 U.S. 304, 319 (1936). In any event, the problem here is not a clash between the respective authorities of President and Congress. As noted above, the Executive Order defers in terms to the contingency of Congressional action to provide for the government of the islands. The inaction of Congress thus far has certainly not been due to its lack of awareness of the arrangements which the President has made. The Executive Order, as we have seen, requires that Congress be kept informed of all laws passed by the Islands legislature. Moreover, Congress is regularly called upon to appropriate funds for, and to make disposition of certain revenues accruing to the United States from, the operation of the governmental arrangements provided by the Executive Order.[9] We are not, under these circumstances, inclined to view the mere absence of Con-

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[9] Congress has appropriated funds to build the civil administration courthouse, see *Hearings Before the Subcommittee of the House Committee on Appropriations*, 89th Cong., 1st Sess. 169 (1959), and continuously has appropriated funds to assist the civil administration of the Ryukyus, *e.g.*, H.R. Doc. 15 (Part I), 89th Cong., 1st Sess. 228 (1965). In Section 3 of the Act of July 12, 1960, 74 Stat. 461, Congress expressly provided for the disposition of "fines, fees, and forfeitures received by the civil administration of the Ryukyu Islands," and, in Section 6 of the same Act, it provided that "nothing in this Act shall be construed to extend the application of any law of the United States to the Ryukyu Islands which would not otherwise be applicable there." For other examples of Congressional awareness of the exercise of Executive power in the Ryukyus, see *Hearings before the House Committee on Armed Services on Sundry Legislation Affecting the Naval and Military Establishments*, 84th Cong., 2d Sess. (1955). See also 75 Stat. 463 (1961), 22 U.S.C. § 1945 (1964).

gressional action as implying either Congressional ignorance of, or dissatisfaction with, the Presidential course.[10]

Appellant insists, however, that her constitutional rights are violated unless she is tried in an Article III court, which only Congress can provide. The Supreme Court has, however, recognized an extensive power in the President, absent Congressional provision, to set up special tribunals in occupied foreign lands to try American citizens for crime. This is *Madsen* v. *Kinsella*, 343 U.S. 341 (1952), where the Court expressly noted that this power on occasion survives the cessation of hostilities.[11] We think that, under the special circumstances of our relationship to Okinawa, it can survive the Treaty of Peace.

Affirmed.

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[10] As noted above, appellant does not press upon us a claim that the President could not exercise authority over the Ryukyus if he had been delegated such power by Congress. That he could so act has long been settled law. American Ins. Co. v. Cantor, 26 U.S. (1 Pet.) 685 (1828). See generally 1 MOORE, FEDERAL PRACTICE 22-26 (2d ed. 1964).

[11] "It is suggested that, because the occupation statute took effect September 21, 1949, whereas the crime charged occurred October 20, 1949, the constitutional authority for petitioner's trial by military commission expired before the crime took place. Such is not the case. The authority for such commissions does not necessarily expire upon cessation of hostilities or even, for all purposes, with a treaty of peace. It may continue long enough to permit the occupying power to discharge its responsibilities fully. *Santiagos* v. *Nogueras*, 214 U.S. 260; *Neely* v. *Henkel*, 180 U.S. 109, 124; *Burke* v. *Miltenberger*, 19 Wall. 519; *Leitensdorfer* v. *Webb*, 20 How. 176; *Cross* v. *Harrison*, 16 How. 164."
Madsen v. Kinsella, 343 U.S. at 360.

APPENDIX "B"

Decision of Judge Joseph C. McGarraghy of the U.S. District Court for the District of Columbia, in *Donna A. Nicholson, Petitioner* v. *Robert S. McNamara, Respondent,* Habeas Corpus No. 141-61, dated November 19, 1963:

The petitioner, Donna A. Nicholson, the wife of a member of the Armed Forces, brings this action against the Secretary of Defense, Robert S. McNamara, seeking relief under the Declaratory Judgment Act, 28 U.S.C. Sec. 2201. The parties have filed cross-motions for summary judgment.

On June 16, 1961, Mrs. Nicholson filed a petition in this Court for a writ of habeas corpus, alleging detention without indictment by a Grand Jury in violation of her constitutional rights, by the United States Civil Administration Court of the Ryukyu Islands. On the same day, the Secretary of Defense was ordered by the Court to show cause why a writ of habeas corpus could not issue, and the Court further ordered that Petitioner be retained in the custody of the United States Army Hospital at Camp Kue, Okinawa, until further order of the Court.

However, on June 26, 1961, petitioner was tried by the Civil Administration Court without a jury, and found guilty on a charge of murder. On the same day she was sentenced to five years at hard labor, but the execution of the sentence was suspended, and she was placed on probation for five years. A petition to appeal the conviction was filed, but petitioner evidently instructed her attorney to dismiss the appeal, as she was leaving the Islands and returning to the United States.

The Secretary of Defense then moved to dismiss the petition for a writ of habeas corpus on the ground that Mrs. Nicholson was no longer in custody as re-

quired by the Habeas Corpus Statute, 28 U.S.C., Sec. 2241. The Court granted respondent McNamara's motion to dismiss on July 24, 1961, but granted petitioner leave to amend her complaint by filing this action for declaratory judgment.

That relief by habeas corpus was available to petitioner is indicated by the later decision of the Supreme Court on January 14, 1963, in *Jones* v. *Cunningham*, 371 U.S. 236 (1962) in which the Court held:

> "While petitioner's parole releases him from immediate physical imprisonment, it imposes conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of the members of the Virginia Parole Board within the meaning of the habeas corpus statute . . ."

Thus it appears that habeas corpus was a proper remedy to challenge the action of the Civil Administration Court although petitioner is on probation. However, Mrs. Nicholson is now before the Court seeking a declaratory judgment.

Having succeeded in obtaining dismissal of the habeas corpus petition on asserted jurisdictional grounds (a point of doubtful validity in view of the later ruling of the Supreme Court in *Jones* v. *Cunningham*, supra) the respondent now opposes the suit for declaratory judgment on jurisdictional grounds, contending that petitioner did not exhaust available appellate review.

In support of this argument respondent cites *Clark* v. *Memolo*, 174 F. 2d 978 (C.A.D.C. 1949) in which the Court of Appeals for this circuit said that "the action for declaratory judgment is not suitable and does not lie in the District of Columbia in such cases as a substitute for . . . a new trial or appeal."

This same principle has been applied in habeas corpus cases also. As the Supreme Court said in *Sunal* v. *Large,* 332 U.S. 174 (1947), "the general rule is that the writ of habeas corpus will not be allowed to do service for an appeal." However, the Court specifically recognized that where the writ is sought to attack the jurisdiction of the court based on violation of specific constitutional guarantees, it has been sustained, regardless of the lack of appeal. (see pp. 178-179).

The Court is of the opinion that the rights of the petitioner should be decided on their merits and in this proceeding rather than requiring the petitioner to resort to another petition for writ of habeas corpus which presumably would be resisted with the same defenses raised here.

The exception to the general rule which was recognized in *Sunal* v. *Large,* supra, also is applicable to actions for declaratory judgment as that action may be an alternative to habeas corpus under certain circumstances. Thus in *Hurley* v. *Reed,* 110 U.S. App. D.C. 32 (1961) the Court allowed a federal prisoner whose parole was revoked by the Parole Board, without representation of counsel, to proceed by declaratory judgment although habeas corpus would possibly have been available in Pennsylvania, the place of his confinement. And in *Voss* v. *State of Illinois,* 204 F. Supp. 268 (1962) the District Court did not require petitioner Goss, who had been convicted and had appealed in the state courts, to submit to confinement by the sheriff and bring habeas corpus, but allowed him to sue immediately for a declaratory judgment in the Federal Court.

The Supreme Court has sustained the writ of habeas corpus while there has been no appeal, but the petitioner's constitutional rights were violated, or where

exceptional circumstances were present. See *Ex parte Wilson,* 114 U.S. 417 (1884); *Ex parte Bain,* 121 U.S. 1 (1886); and *Callan* v. *Wilson,* 127 U.S. 540 (1887).

In *Bowen* v. *Johnston,* 306 U.S. 19 (1938), the Supreme Court stated that the rule which requires resort to appellate procedure for the correction of errors is "not so inflexible that it may not yield to *exceptional circumstances* where the need for the remedy afforded by the writ of habeas corpus is apparent." (Emphasis supplied).

While the above cases deal with the writ of habeas corpus, the common thread running through all but *Bowen* and *Hudgings* is the concern with the constitutional right to indictment by grand jury, and trial by jury. A declaratory judgment, just as habeas corpus, may well be invoked to protect against a violation of those constitutional rights. Thus, there does not appear to be any reason why the failure of Mrs. Nicholson to appeal should preclude this action, when her rights have been placed in jeopardy, and habeas corpus is not readily available.

This Court is of the opinion that the confinement of Mrs. Nicholson pursuant to an information charging her with a capital offense, and her subsequent trial and conviction by a court without a jury, was in violation of her rights under Article III, Section 2, Clause 3, and the Fifth and Sixth Amendments to the Constitution. (See *Ikeda* v. *McNamara,* Habeas Corpus 416-62).

Accordingly, petitioner's motion for summary judgment will be granted and respondent's motion will be denied.

Counsel for petitioner will submit an appropriate order.

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Findings of Fact and Conclusions of Law entered October 19, 1962 by Judge Charles F. McLaughlin of the U.S. District Court for the District of Columbia, in Ikeda v. McNamara, Habeas Corpus No. 416-62:

FINDINGS OF FACT

1. The Court has jurisdiction of the parties and the subject matter of this cause.

2. Petitioner, Bennett Ken Ikeda, is a citizen of the United States of America in civilian status in the Ryukyuan Islands (Okinawa).

3. By a complaint dated September 11, 1962 issued by a Judge of the United States Civil Administration Court, Ryukyuan Islands, the petitioner was charged with the following criminal violations:

(a) Under Article 2.3.4.1 of the United States Civil Administration Ryukyuan Penal Code, Civil Administration Ordinance No. 144, with having operated without a foreign investment license from the Chief Executive, Government of the Ryukyuan Islands.

(b) Under Article 246 of the Penal Code of Japan, with fraud punishable by imprisonment at forced labor for not more than ten years.

4. On the basis of said complaint a warrant of arrest thereafter was issued against the petitioner by a Judge of the United States Civil Administration Court, Ryukyuan Islands.

5. On September 13 and 14, 1962, a preliminary hearing on the said complaint was held before a Judge of the United States Civil Administration Court, Ryukyuan Islands as a result of which the petitioner was bound over for trial before said Courts to be held on October 15, 1962 with bond being established in the amount of $5000.00.

6. In default of bond, petitioner is now and ever since the said preliminary hearing, has been detained in a prison

in the Ryukyuan Islands at the instance and in the custody of the respondent ROBERT S. MCNAMARA.

7. All of the proceedings aforementioned, giving rise to petitioner's detention were instituted and advanced by respondent under Executive Order 10713 promulgated by the President of the United States on June 5, 1957, as amended on March 19, 1962, by Executive Order 11010.

8. That neither by the terms of the said Executive Order as amended nor by the terms of any rules and regulations issued thereto, is any provision made for trial before a Court, or for indictment of a grand jury as required by the Fifth Amendment to the Constitution, or for a trial by jury as required by Article III, Sec. 2, Clause 3 of the Constitution, and by the Sixth Amendment to the Constitution.

9. That petitioner has and will be denied the right of trial before a Court, indictment of a grand jury and a trial by jury.

10. That the detention of the petitioner by the respondent contravenes Article III, Sec. 2, Clause 3 of the Constitution and the Fifth and Sixth Amendments thereto.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and of the subject matter of this cause.

2. The denial to the petitioner of trial before Court, of indictment by a grand jury as required by the Fifth Amendment to the Constitution and of a trial by jury as required by Article III, Section 2, Clause 3 of the Constitution and the Sixth Amendment thereto, is in violation of the petitioner's Constitutional rights.

3. The detention of the petitioner by the respondent is therefore contrary to law and an Order should be entered discharging the petitioner from the custody of the respondent.

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United States Constitution

Article II — The President

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

* * * * *

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

* * * * *

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to

the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

* * * * *

ARTICLE III—THE JUDICIARY

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

* * * * *

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

* * * * *

APPENDIX "C"

Treaty of Peace with Japan, Executive Order, Military Civil Administration Ordinance and "Bill" Involved.

Treaty of Peace with Japan, Article 3

> Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.

Title 18, United States Code, Section 3231, provides in pertinent part:

> The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Executive Order 10713

June 5, 1957

As amended by Executive Order 11010, March 19,1966

PROVIDING FOR ADMINISTRATION OF THE RYUKYU ISLANDS

WHEREAS under Article III of the Treaty of Peace with Japan the United States is exercising all and any powers of administration, legislation and jurisdiction over the territory, including territorial waters, and inhabitants of the Ryukyu Islands (the term "Ryukyu Islands," as used in this Order, meaning Nahsei Shoto south of 29 degrees

North Latitude, excluding the islands in the Amami Oshima Group with respect to which all rights and interests of the United States under the said article of the treaty have been relinquished to Japan;

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution, and as President of the United States and Commander-in-Chief of the Armed Forces of the United States, it is ordered as follows:

Section 1. Except as the Congress may otherwise provide by law with respect to the Government of the Ryukyu Islands, all administrative, legislative, and jurisdictional powers reposed in the United States by Article III of the Treaty of Peace with Japan shall be exercised in accordance with this Order.

Section 2. The said powers shall be exercised by the Secretary of Defense, subject to the direction and control of the President of the United States. In the exercise of this authority the Secretary of Defense shall encourage the development of an effective and responsible Ryukyuan Government, based on democratic principles and supported by a sound financial structure, shall make every effort to improve the welfare and well-being of the inhabitants of the Ryukyu Islands, and shall continue to promote the economic and cultural advancement of the inhabitants. The Secretary of Defense may delegate any function vested in him by this Order to such officials or organizational entities of the Department of Defense as he may designate.

Section 3. The Secretary of State shall be responsible for the conduct of relations with foreign countries and international organizations with respect to the Ryukyu Islands.

Section 4. (a) There is established, under the jurisdiction of the Secretary of Defense, a civil administration of the Ryukyu Islands, the head of which shall be known as the High Commissioner of the Ryukyu Islands (hereinafter referred to as the "High Commissioner"). The High

Commissioner (1) shall be designated by the Secretary of Defense, after consultation with the Secretary of State and with the approval of the President, from among the active duty members of the armed forces of the United States, (2) shall have the powers and perform the duties assigned to him by the terms of this order, (3) may delegate any function vested in him to such officials of the civil administration as he may designate, and (4) shall carry out any powers or duties delegated or assigned to him by the Secretary of Defense pursuant to this order.

(b) There shall be under the High Commissioner a civilian official who shall have the title of Civil Administrator. The Civil Administrator shall be designated by the Secretary of Defense, after consultation with the Secretary of State and with the approval of the President, and shall have such powers and perform such duties as may be assigned to him by the High Commissioner. (As amended by EO 11010)

Section 5. There is hereby continued, subject to the provisions of this order, the now existing Ryukyuan central government (hereinafter referred to as the Government of the Ryukyu Islands).

Section 6. (a) The legislative power of the Government of the Ryukyu Islands, except as otherwise provided in this order, shall be vested in a legislative body consisting of a single house. Members of the legislative body shall be directly elected by the people of the islands in 1962, and triennially thereafter, for terms of three years.

(b) The territory of the Ryukyu Islands shall continue to be divided into districts, each of which shall elect one member of the legislative body. The present 29 districts are continued, but the number or boundaries of districts may be altered by law enacted by the Government of the Ryukyu Islands with the approval of the High Commissioner. Any redistricting shall be done with due regard to obtaining districts which are relatively compact and

contiguous and which have reasonably equal populations. (As amended by EO 11010)

Section 7. The legislative body shall exercise legislative powers which extend only to all subjects of legislation of domestic application. The legislative body shall determine the procedures for judging the selection and qualification of its own members and shall choose therefrom its officers and determine its rules and procedures. Local legislative bodies, the members of which shall be elected by the inhabitants of the respective municipalities in accordance with procedures established by the legislative body of the Government of the Ryukyu Islands, shall be given and shall exercise appropriate municipal legislative powers. The High Commissioner shall report to the Secretary of Defense all laws enacted by the legislative body of the Government of the Ryukyu Islands and the said Secretary shall report the same to the Congress of the United States.

Section 8. (a) The executive power of the Government of the Ryukyu Islands shall be vested in a Chief Executive, who shall be a Ryukyuan. The Chief Executive shall have general supervision and control of all executive agencies and instrumentalities of the Government of the Ryukyu Islands and shall faithfully execute the laws and ordinances applicable to the Ryukyu Islands.

(b)(1) The Chief Executive shall be appointed by the High Commissioner on the basis of a nomination which is made by the legislative body herein provided for and is acceptable to the High Commissioner. A Chief Executive so appointed shall serve for the remainder of the term of the legislative body which nominated him and for such reasonable period thereafter as may be necessary for the appointment of a successor pursuant to this paragraph, or, failing such an appointment, pursuant to paragraph (2) of this subsection.

(2) In the event the legislative body does not make an acceptable nomination within a reasonable time as deter-

mined by the High Commissioner, or if by reason of other unusual circumstances it is deemed by the High Commissioner to be necessary, he may appoint a Chief Executive without a nomination. The tenure of any Chief Executive appointed pursuant to this paragraph (2) shall be as determined by the High Commissioner.

(c) The head of each municipal government shall be elected by the people of the respective municipality in accordance with procedures established by the legislative body of the Government of the Ryukyu Islands. (As amended by EO 11010).

Section 9. (a) Every bill passed by the legislative body shall, before it becomes law, be presented to the Chief Executive. If the Chief Executive approves a bill he shall sign it, but if not he shall return it, with his objections, to the legislative body within fifteen days after it shall have been presented to him. If a bill is not returned within the specified fifteen day period, it shall become law in like manner as if it had been approved by the Chief Executive, unless the legislative body by adjournment prevents its return, in which case it shall be law if approved by the Chief Executive within forty-five days after it shall have been presented to him; otherwise it shall not be law. When a bill is returned to the legislative body with objections by the Chief Executive, the legislative body may proceed to reconsider it. If, after such reconsideration two thirds of the legislative body pass it, it shall become law in like manner as if it had been approved by the Chief Executive.

(b) If any bill approved by the legislative body contains several items of appropriation of money, the Chief Executive may object to one or more of such items or any part or parts, portion or portions thereof, while approving the other items, or parts or portions of the bill. In such case, the Chief Executive shall append to the bill, at the time of signing it, a statement of the items, or parts or

portions thereof, objected to, and the items, or parts or portions thereof, so objected to shall not take effect. Should the legislative body seek to over-ride such objections of the Chief Executive, the procedures set forth above will apply. In computing any period of days for the foregoing purposes, Sundays and legal holidays shall be excluded. (As amended by EO 11010)

Section 10. Judicial powers in the Ryukyu Islands shall be exercised as follows:

(a) A system of courts, including the civil and criminal courts of original jurisdiction and appellate tribunals, shall be maintained by the Government of the Ryukyu Islands. These courts shall exercise jurisdiction as follows:

(1) Civil jurisdiction in all civil cases, subject to the provisions of paragraphs b(1) and (2), below.

(2) Criminal jurisdiction over all persons except (a) members of the United States Forces or the civilian component, (b) employees of the United States Government who are United States nationals, and (c) dependents of the foregoing, provided, nevertheless, that subject to paragraph c, below, criminal jurisdiction may be exercised by courts of the Government of the Ryukyu Islands over dependents who are Ryukyuans. Criminal jurisdiction may be withdrawn from the courts of the Government of the Ryukyu Islands by the High Commissioner in any case which affects the security, property, or interests of the United States and which is so designated by him. (As amended by EO 11010)

(b) A system of courts, including civil and criminal courts of original jurisdiction and appellate tribunals, shall be maintained by the Civil Administration. These courts shall exercise jurisdiction as follows:

(1) Civil jurisdiction over any case or controversy of particular importance affecting the security, property, or interests of the United States, as determined by the High

Commissioner. Such cases instituted in a court of the Government of the Ryukyu Islands shall be transferred to the appropriate Civil Administration court upon order of the High Commissioner at any time in the proceedings, including final appellate process, prior to the entering of final decree, order or judgment. Cases so transferred may be subject to trial de novo in the discretion of the court of the Civil Administration.

(2) Civil jurisdiction in cases and controversies in which a member of the United States forces or the civilian component thereof, an employee of the United States Government who is a United States national, or a dependent of one of the foregoing, unless such dependent is a Ryukyuan, is a party if upon petition of one of the parties to the suit the High Commissioner deems the case to be important in its effect, direct or indirect, on the security of the Islands, on foreign relations or on the security, property or interests of the United States or nationals thereof and determines that the Civil Administration should assume jurisdiction over the case. In this event, such cases instituted in a court of the Government of the Ryukyu Islands shall be transferred to the appropriate Civil Administration court by order of the High Commissioner at any time in the proceedings, including final appellate process, prior to the entering of final decree, order or judgment. Cases so transferred may be subject to trial de novo in the discretion of the court of the Civil Administration.

(3) Criminal jurisdiction over (a) the civilian component, (b) employees of the United States Government who are United States nationals, and (c) dependents, excluding Ryukyuans, (i) of the foregoing and (ii) of members of the United States forces. (As amended by EO 11010)

(4) Criminal jurisdiction in specific cases of particular importance affecting the security, property, or interests of the United States, as determined by the High Commissioner. Such cases instituted in a court of the Government

of the Ryukyu Islands may be transferred to the appropriate Civil Administration court upon order of the High Commissioner at any time in the proceedings, including the final appellate process, prior to the entering of final decree, order or judgment. Cases so transferred may be subject to trial de novo in the discretion of the court of the Civil Administration.

(c) Criminal jurisdiction over persons subject to trial by courts-martial under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.) will be exercised by courts other than courts-martial only when the military commander concerned determines not to exercise military jurisdiction under the Uniform Code of Military Justice and specifically indicates to the High Commissioner his approval of referring the case to another court.

(d) The highest appellate court of the Civil Administration shall have jurisdiction to review:

(1) Any case, civil or criminal, tried in the inferior courts of the Civil Administration, whether initiated therein or removed thereto, upon appeal by any party.

(2) Any case, civil or criminal, decided by the highest court of the Government of the Ryukyu Islands having jurisdiction thereof in which is involved

(i) a conflict of decision between the highest court of the Government of the Ryukyu Islands and the highest appellate court of the Civil Administration or

(ii) a question of United States, foreign or international law, including the interpretation of any treaty, act of Congress of the United States, Executive Order of the President of the United States, or of a proclamation, ordinance or order of the High Commissioner upon appeal by any party or, if no such appeal be taken, upon petition, setting forth the special grounds therefor, presented to the court by the chief legal officer of the Civil Administration. The highest appellate court of the Civil Administra-

tion shall have power to affirm, modify, set aside or reverse the judgment, order or decree reviewed or to remand the case with such directions for a new trial or for entry of judgment as may be just. In a criminal case, the appellate court may set aside the judgment of conviction, or may commute, reduce (but not increase) or suspend the execution of sentence.

(e) Nothing in this section shall be construed as extending to any court of the Government of the Ryukyu Islands or of the Civil Administration, jurisdiction over the United States Government or any agency thereof unless specific authority has been conferred in the premises by the Congress of the United States.

(f) For the purpose of these provisions the expression

(1) "Members of the United States Forces" shall mean the personnel on active duty belonging to the land, sea or air armed forces of the United States of America whenever in the Ryukyu Islands.

(2) "Civilian component" shall mean the civilian persons of United States nationality who are in the employ of, serving with, or accompanying the United States forces whenever in the Ryukyu Islands.

(3) "Dependents" shall mean the spouse and any child or relative by affinity, consanguinity or adoption when dependent upon the principal for over half of his or her support whenever in the Ryukyu Islands.

Section 11. (a) The High Commissioner may, if such action is deemed necessary for the fulfillment of his mission under this order, promulgate laws, ordinances or regulations. The High Commissioner, if such action is deemed by him to be important in its effect, direct or indirect, on the security of the Ryukyu Islands, or on relations with foreign countries and international organizations with respect to the Ryukyu Islands, or on the foreign relations of the United States, or on the security, property or inter-

ests of the United States or nationals thereof, may, in respect of Ryukyuan bills, laws, or officials, as the case may be, (1) veto any bill or any part or portion thereof, (2) annul any law or any part or portion thereof within 45 days after its enactment, and (3) remove any public official from office. The High Commissioner has the power of reprieve, commutation and pardon. The High Commissioner may assume in whole or in part, the exercise of full authority in the islands, if such assumption of authority appears mandatory for security reasons. Exercise of authority conferred on the High Commissioner by this subsection shall be promptly reported, together with the reasons therefor, to the Secretary of Defense who shall inform the Secretary of State.

(b) In carrying out the powers conferred upon him by the provisions of subsection (a) of this section, the High Commissioner shall give all proper weight to the rights of the Ryukyuans and shall, in particular, have proper regard for the provisions of the second sentence of Section 2 of this order. (As amended by EO 11010)

Section 12. In carrying out this order, including Section 11, the High Commissioner shall preserve to persons in the Ryukyu Islands the basic liberties enjoyed by people in democratic countries, including freedom of speech, assembly, petition, religion and press, and security from unreasonable searches and seizures, and from deprivation of life, liberty or property without due process of law.

Section 13. The Secretary of Defense may issue such further instructions as may be necessary for the carrying out of this order.

Section 14. Except as they may be inconsistent herewith, the proclamations, ordinances, and directives heretofore issued by the existing Civil Administration and its predecessor Military Government agencies shall continue in force and effect until modified, revoked, or superseded under the authority of this order. No proceeding, either

civil or criminal, pending in any court of the Government of the Ryukyu Islands or of the Civil Administration of the Ryukyu Islands on the date of this order shall abate by reason of this order; and any such proceeding shall be conducted and concluded in accordance with laws, ordinances, proclamations, and directives in effect immediately before the date of this order.

Section 15. This order shall become effective immediately, but until its provisions shall severally become operative as herein provided, the legislative, executive and judicial functions now vested in the Civil Administration and the Government of the Ryukyu Islands, shall continue to be exercised as now provided by law, ordinance, proclamation or directive, and the incumbents of all offices under the Civil Administration or the Government of the Ryukyu Islands shall continue in office until their successors are appointed or elected and have qualified, unless sooner removed by competent authority.

Transitional provisions — Executive Order 11010, March 19, 1962.

Section 3. (a) This order shall not operate to terminate immediately the tenure of the Chief Executive of the Government of the Ryukyu Islands now in Office. That tenure shall terminate when his first successor, appointed under the provisions of Executive Order No. 10713 as amended by this order, enters upon office as Chief Executive or on such other date as may be fixed by the High Commissioner.

(b) The members of the legislative body in office on the date of this order shall continue in office until the termination of their present terms as members.

(c) The amendment of Section 4 of Executive Order No. 10713 made by this order shall become effective on July 1, 1962. All other parts hereof shall become effective on April 1, 1962.

(Translation)

Bill Number 60

Act Number 44

(Passed August 28, 1952)

Be it enacted by the Legislature of the Government of the Ryukyu Islands

A Bill

Concerning Income Tax

Chapter I General Provisions

• • • • •

Section II Final Return

Article 38. a. An individual coming under Paragraph *a* or Item (1) of Paragraph *b* of Article 1 shall, in case his income in the taxable year exceeds Yen 12,000, file within the term from May 1 to 31 of the following year, a return with the Government stating therein matters referred to hereunder and other necessary matters, in accordance with the provision of the enforcement regulations. (This return shall hereinafter be called a "final return"). The same shall apply to cases where the total income for the taxable year of a person who has reported the declared income tax or whose declared income tax has been determined or of a person subject to the provision of Paragraph *a* or *b* of Article 27 is not more than Yen 12,000 or zero (excepting the case where the loss report as provided for in Article 39 is submitted).

1. The total income and taxable total income for the taxable year.

2. The adjusted income and special income for the taxable year in cases where the income tax is computed pursuant to the provision of Article 26, or the secondary adjusted income and special income in cases

where the provision of Paragraph *a* or *b* of Article 27 is applicable.

3. Other than the case coming under the preceding item, the income tax computed pursuant to the provision of Article 25 for the taxable total income as provided for in Item (1) (or the income tax as referred to under Article 29) in cases where the same Article is applicable.

4. In cases where the amount of income tax is computed pursuant to the provision of Article 26, the estimates of the tax amount enumerated in Item (1) or Item (4) of Paragraph *a* of the same Article and the total of those estimates.

5. In cases where the provision of Paragraph *a* or *b* of Article 27 is applicable, the tax amount enumerated in Item (1) to (4) of Paragraph *a* of the same Article and the income tax computed pursuant to the provision of the same paragraph.

6. The basis for the computation of the total income, taxable total income under Item (1), adjusted income under Item (2) or secondary adjusted income, special income and income tax as provided for in Item (3) to the preceding item inclusive.

7. The assets as the sources of income, location of business or place where the income has accrued.

8. The amount of the income tax collected or to be collected from the income for the taxable year pursuant to the provision of Article 51, Article 52 Paragraph *a*, Article 55 or Article 57.

9. The amount of the income tax paid or to be paid from the income for the taxable year pursuant to the provision of Article 43, Article 44, Article 46 or Article 60 (excluding the interest on delinquent tax

amount as referred to in the provision of Article 69 Paragraph *a*.)

10. The excess or deficit in cases where the total amount of income tax as provided for in the preceding two items is at variance with the amount of income tax as provided for in Item (3) to Item (5) inclusive.

11. Net loss to be deductible for the taxable year pursuant to the provision of Article 9 Paragraph *a*, or net loss to be allowed deduction pursuant to the provision of Article 18.

12. Matters concerning exemption or deduction under the provision of Article 18 to Article 24 inclusive or Article 28.

b. In case where a taxpayer receives the payment of earned income from one payer of salary, wage, etc., and where no income is earned besides the earned income in the taxable year, the final return shall not be required to be filed, regardless of the provision of the preceding paragraph.

c. An individual whose income tax was withheld pursuant to Article 52, Paragraph *a* shall attach to the final return the withhold certificate to be given in accordance with Article 77.

d. In case an individual liable to file a final return has died without filing the return, the heir (including testamentary donee by a universal title, hereinafter the same) shall file the return in accordance with the provision of the enforcement regulations.

e. The provision of Article 36 shall apply to the case the final return is filed.

• • • • •

Chapter VIII Penalties

Article 87. a. A person who has evaded the income tax as referred to under Item (3) to Item (5) inclusive of Article 38 Paragraph *a* or received the refund of the income tax under the provision of Article 49 Paragraph *a* (including the case where this applies *mutatis mutandis* in Paragraph *e* of the same Article) by an act of fraud or other unjust means, shall be punished with penal servitude for not more than three years and/or with a fine of not more than Yen 1,000,000.

b. In the case of Paragraph *a*, the Government shall immediately collect the income tax evaded or refunded (including the amount equivalent to the tax which has become excess among the amount as added pursuant to Article 49 Paragraph *e*).

Article 88. a. A person who has evaded the income tax to be collected pursuant to the provisions of Article 51, Article 52 Paragraph *a*, Article 53 or Article 55 to Article 57 inclusive by an act of fraud or other unjust means shall be punished with penal servitude and/or not more than Yen 150,000.

b. In cases where the income tax evaded under the preceding paragraph is more than Yen 150,000, the fine under the same paragraph may, according to circumstances, be more than Yen 150,000 and not more than the amount equivalent to the income tax evaded.

Article 89. a. A person who has not turned over the income tax to be withheld and turned over pursuant to the provision of Article 51, Article 52, Article 53 Paragraph *a*, or Article 55 to Article 57 inclusive shall be punished with penal servitude not more than three years and/or with a fine not more than Yen 300,000.

b. In cases where the income tax which has not been turned over under the preceding paragraph is more than

Yen 300,000, the fine under the same paragraph may, according to circumstances, be more than the amount equivalent to the income tax which has not been turned over.

UNITED STATES CIVIL ADMINISTRATION OF THE RYUKYU ISLANDS
Office of the Deputy Governor
APO 719

Civil Administration Ordinance No. 114

21 July 1953

RYUKYUAN INCOME TAXES

Amended by:

Ch 1, 26 June 54
CH 2, 10 Nov 54

Pursuant to the powers heretofore reserved to the Deputy Governor, the following "Supplementary Provisions" to Act Number 44, 1952, of the Government of the Ryukyu Islands, entitled "Income Tax Law" are hereby made a part thereof, and shall prevail notwithstanding anything to the contrary within the aforesaid Act.

Income Tax Law

Supplementary Provisions

Section 1. General

a. In the case of taxable years beginning after 30 June 1953, income tax imposed by the Income Tax Law shall be levied, collected and paid as prescribed thereby, except as otherwise herein provided, for each taxable year, upon the net income from sources within or earned within the Ryukyu Islands, of every foreign national, as hereinafter defined, at the rates shown in the table below. Such income when earned in foreign currency credits shall be expressed

in terms of the equivalent Ryukyuan currency, converted at the established exchange rate in effect when earned.

If the net income is:	The tax shall be:
Not over Yen 120,000	10% of the net income
Over Yen 120,000 but not over Yen 240,000	Yen 12,000 plus 12% of the excess over Yen 120,000
Over Yen 240,000 but not over Yen 360,000	Yen 26,400 plus 14% of the excess over Yen 240,000
Over Yen 360,000 but not over Yen 480,000	Yen 43,200 plus 16% of the excess over Yen 360,000
Over Yen 480,000 but not over Yen 600,000	Yen 62,400 plus 18% of the excess over Yen 480,000
Over Yen 600,000 but not over Yen 720,000	Yen 84,000 plus 20% of the excess over Yen 600,000
Over Yen 720,000 but not over Yen 840,000	Yen 108,000 plus 22% of the excess over Yen 720,000
Over Yen 840,000 but not over Yen 960,000	Yen 134,400 plus 24% of the excess over Yen 840,000
Over Yen 960,000 but not over Yen 1,080,000	Yen 163,200 plus 26% of the excess over Yen 960,000
Over Yen 1,080,000 but not over Yen 1,200,000	Yen 194,400 plus 28% of the excess over Yen 1,080,000
Over Yen 1,200,000 but not over Yen 1,800,000	Yen 228,000 plus 31% of the excess over Yen 1,200,000
Over Yen 1,800,000 but not over Yen 2,400,000	Yen 414,000 plus 34% of the excess over Yen 1,800,000
Over Yen 2,400,000 but not over Yen 3,000,000	Yen 618,000 plus 37% of the excess over Yen 2,400,000
Over Yen 3,000,000 but not over Yen 4,200,000	Yen 840,000 plus 42% of the excess over Yen 3,000,000
Over Yen 4,200,000 but not over Yen 6,000,000	Yen 1,344,000 plus 48% of the excess over Yen 4,200,000
Over Yen 6,000,000 but not over Yen 9,000,000	Yen 2,208,000 plus 56% of the excess over Yen 6,000,000
Over Yen 9,000,000	Yen 3,888,000 plus 65% of the excess over Yen 9,000,000

b. In lieu of the tax imposed by the preceding paragraph, for the taxable years beginning after 30 June 1954, in the case of an individual who is a married principal, having a net income equal to or in excess of Yen 648,000, when such individual so elects, the tax imposed by this section shall be determined by multiplying by two (2) the tax which would be imposed where the net income divided by two (2). However, no married principal having a net income of less than Yen 648,000 shall be required to pay a tax in excess of an amount equal to that otherwise re-

quired to be paid had the net income been Yen 648,000 and had such election been made, and in the event the spouse of an individual mentioned in the preceding paragraph has income which is taxable hereunder, the above provision shall apply only when the income of the spouse is combined with the income of such individual in a joint return. (Added by Ch 2/54)

Section 2. Definitions

a. The term "foreign national" shall include every natural person whose permanent legal residence is not within the Ryukyu Islands and whose presence therein is pursuant to original entry under authority of military, naval or governmental orders, or by permit of the Deputy Governor. (As amended by Ch 1/54)

b. The term "net income" means the gross income, as hereinafter defined, less deductions allowed by the Income Tax Law (excluding Article 8, paragraph a, 5, thereof), except as provided in Section 3, hereof. (As amended by Ch 2/54)

c. The term "gross income" means income including gains, profits and income derived from salaries, wages or compensation for personal services in the Ryukyu Islands, or whatever kind and in whatever form paid, and wherever paid, or from professions, vocations, trades, business, commerce or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also, from interest, rent, dividends, securities or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any Ryukyuan source whatever. (As amended by Ch 1/54)

Section 5. Estimated Tax

a. All taxpayers under these provisions having taxable income not subject to withholding shall, on or before 15 September each taxable year, prepare and file an estimate

of such income to be received during the taxable year and shall compute the tax to become due thereon. The declaration of estimated income herein provided for shall be made on forms prescribed by the Chief Executive, Government of the Ryukyu Islands. The declaration of estimated income shall be filed with, and one fourth of the estimated tax shall be paid to, the Government of the Ryukyu Islands. On or before the 15th of December and the 15th of March of each taxable year the taxpayer thus preparing a declaration of estimated income shall pay an additional one fourth of the estimated tax in the manner prescribed. Payment of the estimated tax for the final quarter of the taxable year shall be made not later than the 15th of July of the year following the taxable year.

• • • • •

Section 6. Returns

a. Taxpayers whose sole taxable income is derived from wages and salaries subject to withholding under these provisions shall file final returns with and on forms prescribed by the Chief Executive, Government of the Ryukyu Islands, not later than the 15th of August in the year immediately following the taxable year, with payment for any taxes due, or claim for refund in the case of any overpayment.

• • • • •

Section 7. Rules and Regulations

The Chief Executive, Government of the Ryukyu Islands, is hereby authorized and empowered to make such rules and regulations, not inconsistent with the Income Tax Law as supplemented by these provisions, as shall be necessary for the administration of the tax imposed hereby.

Section 8. Rescission.

Paragraph 1.b of Civil Administration Ordinance Number 86, "Income Tax Law," dated 7 October 1952 is rescinded.

Section 9. Effective Date

The effective date of these provisions shall be 1 July 1953.

BY DIRECTION OF THE DEPUTY GOVERNOR:
1 Incl

Withholding Chart

s/t/ CHARLES V. BROMLEY
Brigadier General, U.S. Army
Civil Administration

CA Ordinance No. 144

16 March 1955

PART 1. COURTS OF THE CIVIL ADMINISTRATION

CHAPTER 1. BASIC LAW

1.1.1—All and any powers of administration, legislation and jurisdiction over the territory and inhabitants of the Ryukyu Islands, including their territorial waters, are vested in the Government of the United States of America and will be exercised through the High Commissioner of the Ryukyu Islands and the United States Civil Administration of the Ryukyu Islands. (As amended by Ch 7)

1.1.2—The prevailing law shall be the law of the Ryukyu Islands as it existed on 1 April 1945, as the same has been amended, modified or otherwise altered by the laws of the Civil Administration, the Government of The Ryukyu Islands and their predecessors.

CHAPTER 2. COMPOSITION AND JURISDICTION OF THE CIVIL ADMINISTRATION COURTS

1.2.1—The courts of the Civil Administration having jurisdiction over criminal offenses are the Superior Court, the Sessions Court, and the Appellate Court. (As amended by Ch 19/63)

1.2.2—*Superior Court.* The Superior Court shall have jurisdiction to try all offenses within the criminal jurisdiction of Civil Administration Courts, and shall have the power to impose any lawful punishment. Offenses punishable by death or imprisonment for life shall be tried before three judges, if the defendant waives a jury trial. All other offenses shall be tried before one judge. Judges of the Superior Court shall be appointed to office by authority of the High Commissioner of the Ryukyu Islands. Each judge so appointed shall be a citizen of the United States and in the employ of the United States Government. (As amended by Ch 19)

• • • • •

1.2.5—*Jurisdiction over Offenses.* In conformity with the provisions of Executive Order No. 10713, dated 5 June 1957, jurisdiction of the USCAR criminal court shall extend to:

a. Offenses under any proclamation, ordinance, or directive promulgated by, or under the authority of, the Civil Administration and offenses under any provision of the penal law of the Ryukyu Islands as defined in Section 1.1.2 above.

• • • • •

Chapter 5. Indictment and Jury Trial

(Added by Ch 19/63)

1.5.1—*Right to Indictment and Trial by Jury.* Any person charged with an offense before a Civil Administration Court shall have the right to indictment by a grand jury as to any offense which may be punished by death or imprisonment for a term exceeding one year and trial by petit jury as to any offense other than a petty offense in accordance with the provisions of this chapter.

1.5.2—*Use of Indictment, Information, or Complaint in a Civil Administration Court.* An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term

exceeding one year shall be prosecuted by indictment unless indictment is waived or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment, information, or complaint as authorized by rules of procedure.

1.5.3—*Jury Trial.* Cases, other than petty offenses, shall be tried by petit jury unless the defendant waives a jury trial.

• • • • •

2.2.29—An attempt to do any act which constitutes an offense under any law of the Civil Administration shall constitute an offense which shall be punishable to the same extent as though the act had been committed.

• • • • •

Motion to Perpetuate Testimony

Comes now the plaintiff through her attorneys and moves this Court to allow the plaintiff to take the deposition and/or interrogatories of the following persons:

1. Andres U. Calibuso, Filipino
2. Martin Ellima, Filipino
3. Woo Dong Hahn, Korean
4. Alfred G. Hamann, American
5. Yoshio Higa, Ryukyuan
6. Ken S. Tomita, American Nisei
7. K. Y. Yan, Chinese
8. Rogaciano Yecla, Filipino
9. James W. Kelly, American
10. Jack C. Lentz, American
11. Horace Perker, American
12. Benjamin A. Terrill, American

The above twelve persons were the jury which convicted the plaintiff in the case of United States v. Rose in the Superior Court of the United States Civil Administration of the Ryukyu Islands, Case Sup. C-11-63. The substance

of their testimony is that half of most of the jury is not composed of American Citizens but is made up of Filipino, Korean, Chinese, Ryukyuan and non-resident Americans.

Likewise, the plaintiff intends to show that the jury did not find the plaintiff the operator of the Tea House August Moon.

13. The plaintiff wants to take the deposition of Cyril E. Morrison, the judge who conducted the trial on Okinawa. The substance of his testimony is that he and his court are not members of the Federal Judiciary System; that he was not appointed by the President of the United States or confirmed by the U.S. Senate, as required by the Federal Constitution, but this judge was appointed by the Commanding General of Ryukyu Islands, and that this said judge was a civilian employee of the Department of the Army.

14. The plaintiff wants to take the depositions of Abraham Black, Charles E. Knolton, Jr., and John P. King, the judges on the U.S. Civil Administration, Appellate Court, in Case No. AC-2-63 in Rose v. United States of America. This is to prove that neither the judges nor the Court are members of the Federal Judiciary System and that the judges of this Court were not appointed by the President of the United States or confirmed by the U.S. Senate as required by the Federal Constitution, but such judges were appointed by the Commanding General of Ryukyu Islands and these three judges were civilian employees of the Department of the Army.

All the above persons' addresses are Naha, Okinawa, Ryukyu Islands.

15. Mrs. Toyoko Uehara, 3-59, Tsuji-cho, Naha City.

16. Mrs. Tomi Uehara, same as above.

17. Mr. Seiro Kinjo, same as above.

The last three persons will prove that the plaintiff was not the operator of the Tea House August Moon as alleged in the indictment, but that the plaintiff had leased this tea

house to one Toyoko Uehara who operated said business and paid the income taxes that the plaintiff is charged with not paying. That now the government has offered to return the taxes that said Toyoko Uehara has paid, since Eiko Rose, the plaintiff, has been convicted of income tax evasion.

STUART H. ROBESON
ROGER E. BROOKS
Attorneys for Plaintiff

POINTS AND AUTHORITIES

Rule 27(b) and (c) of the Federal Rules of Civil Procedure is for taking of depositions of witnesses to perpetuate their testimony for use in further proceeding. If this testimony is not taken now, these witnesses may be removed from Okinawa and it will be impossible to locate the witnesses at the time of a trial.

STUART H. ROBESON
ROGER E. BROOKS
Attorneys for Plaintiff

[Filed July 11, 1966]

Order

Upon consideration of the motion of plaintiff to perpetuate testimony filed herein June 7, 1966, it is this 11th day of July, 1966,

ORDERED that the said motion be, and the same hereby is denied.

ROBERT M. STEARNS,
Clerk

By /s/ VIRGINIA DYER
Deputy Clerk

EDWARD M. CURRAN
Presiding Judge

[Filed June 28, 1963]

Exhibit 1

IN THE SUPERIOR COURT OF THE UNITED STATES
CIVIL ADMINISTRATION OF THE RYUKYU ISLANDS

Criminal No. 3

Grand Jury No. 2

THE UNITED STATES OF AMERICA

v.

EIKO UEHARA ROSE

The Grand Jury charges:

Count 1. Violation of Section 2.2.29 of CA Ordinance No. 144.

In that EIKO UEHARA ROSE, being then the owner and recipient of taxable income derived from the operation of the Tea House August Moon, also known as the Tea House Matsunoshita, did, at Okinawa, Ryukyu Islands, on or about 5 September 1962 attempt to evade payment of income taxes in the total amount of about $70,000 lawfully due the Government of the Ryukyu Islands on taxable income derived by her from operations of the Tea House August Moon during the period from about 1 July 1957 to about 30 June 1962, in violation of Article 87 of Government of the Ryukyu Islands Act No. 44, dated 12 October 1952, "Income Tax Law," as amended and supplemented by Civil Administration Ordinance No. 114, dated 21 July 1953, "Ryukyuan Income Taxes," by wilfully, wrongfully, and unlawfully filing with the Government of the Ryukyu Islands false and fraudulent income tax returns for the period 1 July 1957 to 30 June 1962, from which substantial amounts of taxable income actually derived by her from operations of the Tea House August Moon, during the period covered by the said returns, were deliberately omitted by the said EIKO UEHARA ROSE.

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 272

EIKO UEHARA ROSE, PETITIONER

v.

ROBERT S. MCNAMARA, SECRETARY OF DEFENSE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 6a–15a) is reported at 375 F. 2d 924. The opinion of the district court (Pet. App. 1a–5a) is reported at 252 F. Supp. 111.

JURISDICTION

The opinion and judgment of the court of appeals were entered on March 23, 1967. The petition for a writ of certiorari was filed on June 20, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a United States citizen tried and convicted in the Ryukyu Islands, who was afforded all

the protections of the Bill of Rights, including indictment by grand jury, trial by petit jury, and representation by counsel, may have her conviction set aside because the court in which she was convicted was not established pursuant to Article III of the Constitution.

2. Whether the President may by Executive Order provide a system of government for the Ryukyu Islands while they are under the temporary control of the United States.

3. Whether juries in the Ryukyu Islands must be composed entirely of American citizens, and whether petitioner's challenge to the composition of the jury which convicted her is timely.

CONSTITUTIONAL PROVISIONS, TREATY, STATUTES AND EXECUTIVE ORDERS INVOLVED

The pertinent constitutional provisions, treaty, statutes and Executive Orders are set forth in the Appendix to the Petition pp. 23a–45a.

STATEMENT

Petitioner brought this action seeking a declaratory judgment that her conviction for evasion of the Ryukyu Islands' income tax was invalid, because the court in which her trial was held was created pursuant to Executive Order, rather than by Congress under Article III of the Constitution.[1]

[1] The numerous other contentions made in the petition were added piecemeal at various stages of the litigation, mostly in a reply brief filed on the day before oral argument in the court of appeals. None were made to the court in which petitioner was tried or to the appellate court, in the Ryukyu Islands; thus the assertion (Pet. 7) that "Petitioner exhausted her rights in Okinawa" is incorrect.

Okinawa, the principal island in the Ryukyu chain, was taken from Japan in the last battle of World War II.[2] During combat operations, and after cessation of hostilities, military government units carried out governmental functions in areas under their control. On April 28, 1952, Japan entered into a peace treaty with the Allied Powers, including the United States. Article 3 of the treaty dealt with the Ryukyus and provided:

> Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.

3 U.S. Treaties and other International Agreements, Part 3, pp. 3169, 3172–73 (1952), TIAS No. 2490.

On June 5, 1957, President Eisenhower issued Executive Order 10713 (22 F.R. 4007; 3 C.F.R. (1954–1958 Comp.), p. 368), which provided for a dual system of government for the Ryukyus, consisting of

[2] This account is largely taken from the opinion of the Court of Military Appeals in *United States* v. *Vierra*, 14 U.S.C.M.A. 48, 49–50, 33 C.M.R. 260 (1963), in which the constitutionality of the Ryukyu Island courts also was upheld.

a civil administration under the continued jurisdiction of the Secretary of Defense, and a legislature directly elected by the people of the islands.[3]

Section 10 of the Order (22 F.R. 4009–10) similarly provided for a dual system of courts, one system to be maintained by the Government of the Ryukyus (GRI) and a separate one by the civil administration (USCAR). The GRI courts have criminal jurisdiction—

> * * * over all persons except (a) members of the United States forces or the civilian component, (b) employees of the United States Government who are United States nationals even though not subject to trial by courts-martial * * *, and (c) dependents of the foregoing [except for dependents "who are Ryukyuans"].

The USCAR courts have criminal jurisdiction over persons in the excepted classes. In addition the High Commissioner could withdraw criminal jurisdiction from the GRI courts in cases affecting "the security, property, or interests of the United States."

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[3] The Order provided that the head of the civil administration was to be a "High Commissioner" designated by the Sectary of Defense, and that the executive power of the Government of the Ryukyu Islands would be vested in a Chief Executive, who was to be a Ryukyuan, appointed by the High Commissioner after consultation with representatives of the elected legislature. The Chief Executive and the High Commissioner each had, in turn, veto power over legislation passed by the GRI legislature. In 1962, Executive Order 10713 was amended by Executive Order 11010 (27 F.R. 2621, Mar. 19, 1962), to limit the High Commissioner's veto power to cases of unusual importance.

Petitioner's repeated statements that (Pet. 11) the Government of the Ryukyu Islands is "but a creature of the High Commissioner" and (Pet. 13) "but an agency of the United

Although the United States is thus administering governmental functions, including judicial functions, in the Ryukyus pursuant to the Peace Treaty, it continues to recognize those islands as "a part of the Japanese homeland and look[s] forward to the day when the security interests of the Free World will permit their restoration to full Japanese sovereignty."[4] An increasing public demand in Japan and the Ryukyus for a greater Japanese role in their administration has led to the assumption of more responsibility for their economic and cultural affairs by the Government of Japan, increased autonomy for the Government of the Ryukyu Islands, and a Presidential directive calling for "a continuous review of governmental functions in the Ryukyu Islands to determine when and under what circumstances additional functions that need not be reserved to the United States as administering authority can be delegated to the Government of the Ryukyu Islands."[5]

Although the Executive Order stated that it gov-

States" are incorrect. The legislature of that Government is elected by the predominantly Japanese and Ryukyuan population of the islands.

[4] Public Papers of the Presidents—John F. Kennedy, 1962, pp. 247–48 (GPO 1963) (Statement of Mar. 19, 1962, accompanying Executive Order 11010, 27 F.R. 2621). For similar statements see Dept. of State Bull., Vol. 47, No. 1221, p. 770 (Nov. 19, 1962) (referring to "the anticipated eventual restoration of these islands to Japanese administration"); Dept. of State Bull., Vol. 45, No. 1150, pp. 57–58 (July 10, 1961); Dept. of State Bull., Vol. 37, No. 941, p. 52 (July 8, 1957).

[5] Public Papers of the Presidents—John F. Kennedy, 1962 (GPO 1963), pp. 247–48; Exec. Order 11010, Mar. 19, 1962, 27 F.R. 2621; Agreement between the United States and Japan, Economic Cooperation—Ryukyu Islands, TIAS (State Dept., U.S. Treaties and other Internat'l. Agreements) No. 5606 (1964).

erned "except as the Congress may otherwise provide by law," Congress has chosen not to enact substantive laws for the Ryukyus, or to supplant the existing court system. It has, however, appropriated funds to build a courthouse for the USCAR courts and has expressly provided for the disposition of "[f]ines, fees, and forfeitures received by the Civil administration of the Ryukyu Islands."[6] At the same time, Congress has provided that its actions in assisting the administration and development of the Ryukyus shall not "be construed to extend the application of any law of the United States to the Ryukyu Islands which would not otherwise be applicable there." Act of July 12, 1960, 74 Stat. 461, Section 6.

Petitioner was indicted by a grand jury in the Superior Court of the United States Civil Administration of the Ryukyu Islands for attempting—

> to evade payment of incomes taxes in the total amount of about $70,000 lawfully due the Government of the Ryukyu Islands on taxable income derived by her from operations of the Tea House August Moon during the period from about 1 July 1957 to about 30 June 1962, in violation of Article 87 of Government of the Ryukyu Islands Act No. 44, dated 12 October 1952, "Income Tax Law," as amended and supplemented by Civil Administration Ordinance No. 114, dated 21 July 1953, "Ryukyuan Income Taxes," by wilfully, wrongfully, and unlawfully filing with the Government of the Ryukyu Islands false and fraudulent income tax returns * * *.

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[6] See *Hearings Before Subcomm. of the House Comm. on Appropriations, Mutual Security Appropriations for 1960*, 86th Cong., 1st Sess., 169 (1959); Sec. 3, Act of July 12, 1960, 74 Stat. 461.

After a trial at which she was represented by counsel, petitioner was acquitted by a jury of six counts of the indictment, but was convicted of Count 1, which is reproduced in relevant part above. On October 28, 1963, judgment was entered by the USCAR Superior Court, fining petitioner $8,000. Again represented by counsel, petitioner appealed to the USCAR Appellate Court, which affirmed her conviction.

Petitioner's complaint in the United States District Court for the District of Columbia, seeking a declaration that her conviction was "null and void" because the USCAR courts were established pursuant to Executive Order rather than by Congress under Article III of the Constitution, was dismissed after a hearing on cross-motions filed by the parties (Pet. App. 1a–5a). The Court of Appeals affirmed (Pet. App. 6a–15a), rejecting petitioner's attack on the validity of the USCAR court and the numerous other contentions raised for the first time late in the appellate proceedings.

ARGUMENT

Petitioner was accorded every protection of the Bill of Rights at her trial, including indictment by grand jury, trial by petit jury, and representation by counsel. There is no basis for her contention that her trial for evasion of Ryukyuan income taxes could be held only in a court created by Congress under Article III of the Constitution [7] or that the President lacks power

[7] In effect, petitioner claims that by virtue of her residence in the Ryukyus, she is entitled to a right not enjoyed by citizens on the mainland, who cannot demand a trial for evasion of local taxes in an Article III court. Residents of the District of Columbia for example, would be tried for such an offense in the Court of General Sessions. D.C. Code § 47–1589e; cf. *Government of Guam* v. *Kaanehe*, 137 F. Supp. 189 (D. Guam).

to provide for the orderly governing of the Ryukyu Islands, during the interim control of those islands by the United States. The decision below is not in conflict with any decision of this Court or any other court,[8] and further review is not warranted.

1. It is well settled that courts in areas under the control of the United States may be constituted "without regard to the limitations" of Article III, where justified in light of "the particular local setting, the practical necessities, and the possible alternatives", *Glidden Co.* v. *Zdanok,* 370 U.S. 530, 544–548. Thus, in *American Insurance Company* v. *Canter,* 1 Pet. 511, this Court recognized that territorial courts need not meet the requirements of Article III. The argument that judicial power in the territories could only be exercised by judges who pursuant to Article III, hold their offices during good behavior and whose compensation could not be diminished was expressly rejected in *McAllister* v. *United States,* 141 U.S. 174, in which the Court stated that "The absence from the Constitution of such guaranties for territorial judges was no doubt due to the fact that the organization of governments for the Territories was but temporary" (pp. 187–188).

Reid v. *Covert,* 354 U.S. 1, on which petitioner so heavily relies is not to the contrary. In *Reid* the Court held only that an American citizen, not in the military, could not be tried by a military court which did not provide the basic safeguards of indictment and trial by jury. *Reid* did not in any way change the rule that courts in areas outside the United States need not be established as provided in Article III. *Glidden Co.*

[8] The constitutionality of the USCAR courts also was unanimously upheld by the Court of Military Appeals. *United States* v. *Vierra,* 14 U.S.C.M.A. 48, 33 CMR 260 (1963).

v. Zdanok, supra; Abreu v. *United States,* 308 F. 2d 248 (C.A. 1); certiorari denied, 372 U.S. 530; *Fournier* v. *Gonzalez,* 269 F. 2d 26 (C.A. 1). See *Kinsella* v. *Singleton,* 361 U.S. 234, 237.

2. There is similarly no merit to petitioner's contention that the President lacked the power to establish governmental institutions for the Ryukyus. As recently as 1952, this Court recognized that the President's power to provide a government for territories captured during war not only survives the cessation of hostilities but may also survive the signing of a peace treaty; "It may continue long enough to permit the occupying power to discharge its responsibilities fully" *Madsen* v. *Kinsella,* 343 U.S. 341, 360. This power of the President to govern captured territories was first recognized in *Cross* v. *Harrison,* 16 How. 164, where the Court sustained the power of the miltiary to govern California after the Treaty of Peace with Mexico had been signed. In *Cross* the Court concluded that "the civil government of California, organized as it was from a right of conquest, did not cease or become defunct in consequence of the signature of the treaty or from its ratification. We think it was continued over a ceded conquest without any violation of the Constitution or laws of the United States * * * until Congress legislated for it * * *." 16 How. at 194. See also *Dooley* v. *United States,* 182 U.S. 222, 234.

Similarly, in the case of the Ryukyus, the power of the President to provide for the government continues until such time as Congress chooses to act. Here, Congress has not only chosen not to interfere with the government established by the President; it has ac-

tively supported that government through appropriations, including the appropriation for the courthouse where petitioner was tried.[9]

Petitioner's further contention that the President could not lawfully delegate his authority to perform governmental functions in the Ryukyus to subordinates in the executive branch is insubstantial. Since the President has such power, his delegation is one of executive power, not legislative power. Thus, petitioner's lengthy recitation (Pet. 28–32) from cases such as *A. L. A. Schechter Poultry Corp.* v. *United*

[9] Petitioner raises a "welter" of other contentions (Pet. App. 11a) relating to the President's power to govern the Ryukyus, and claims that the decision below conflicts with numerous appellate decisions. Each of these contentions fallaciously assumes the answer to the central question of *whether* the President has authority to govern in the Ryukyus. Petitioner argues at great length (Pet. 32–42) the undisputed proposition that the Constitution has applicability abroad (*Reid* v. *Covert*, 354 U.S. 1), then leaps to the unjustifiable conclusion that the President has identical authority with respect to foreign and domestic affairs. Thus petitioner argues that because the President could not provide criminal laws for (*e.g.*) federal areas in Kansas and Illinois, cf. *United States* v. *Sharpnack*, 355 U.S. 286, 294–295, he had no power to do so for the Ryukyu Islands. But the President's powers in the realm of foreign relations are *not* measured by his powers with respect to domestic affairs. *E.g.*, *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 315–316. More particularly, the President's authority to provide for the governing of ceded or captured territory abroad, has always been regarded as broader than his power to do so for territory incorporated in the United States. *Madsen* v. *Kinsella*, *supra*. The attempt to analogize the Ryukyu Islands to a federal enclave lacks factual or legal basis. Since the USCAR courts clearly do not reflect the discredited view, rejected in *Reid* v. *Covert*, *supra*, that the "Constitution can have no operation in another country" (*In re Ross*, 140 U.S. 453, 464), the purpose of Petitioner's lengthy discussion of that point is obscure.

States, 295 U.S. 495, involving delegations of Congressional powers to administrative agencies, is irrelevant. The President is not required to exercise his authority over the Ryukyu Islands in person, any more than he is required to carry out his other functions in person. *Russell Co.* v. *United States*, 261 U.S. 514, 523; *Sardino* v. *Federal Reserve Bank of New York*, 361 F. 2d 106, 110 (C.A. 2), certiorari denied, 385 U.S. 898.

3. Finally, petitioner's challenge to the composition of the jury which tried her, on the ground that some of the jurors were not American citizens, is neither timely nor sound.[10]

Assuming that petitioner's factual contentions regarding the composition of the jury (for which there is no record support) are true,[11] the legal contention

[10] This contention was not made in the district court, or the USCAR courts. Although in some circumstances a defendant may question the propriety of the composition of the jury for the first time in a collateral proceeding, where the asserted defect goes to the heart of the fairness of the trial (*e.g.*, systematic exclusion of Negroes, see *Whitus* v. *Balkcom*, 333 F. 2d 496 (C.A. 5)), alienage of jurors—if a defect at all in the Ryukyus—"is not fundamental as affecting the substantial rights of the accused", and must be timely raised. *Kohl* v. *Lehlback*, 160 U.S. 293, 301, 302; also *cf. Frazier* v. *United States*, 335 U.S. 497.

[11] Petitioner states that there were "foreign" jurors on the panel (Pet. 43); however, while she proposed to perpetuate testimony to that effect, in a motion (Pet. App. 45a–47a) filed not only after judgment had been entered in the district court, but after a motion for reconsideration had been denied, that motion denied by the court hardly constitutes record support for her factual contention. Petitioner does not directly challenge the court of appeals' ruling that the denial of the motion to perpetuate was no abuse of the district court's discretion (Pet. App. 8a, n. 2). Since the motion offered no explanation

that 28 U.S.C. 1861 requires that only American citizens can sit on juries in the USCAR courts (where most defendants are not Americans) is specious. That provision pertains solely to jurors in United States District Courts, for it refers to citizens who have "resided for * * * one year *within the judicial district* * * *" (emphasis added). See 28 U.S.C. 81–131, defining the "judicial districts" of the federal courts.[12] The Ryukyu Islands are not within any judicial district.

While petitioner baldly asserts (Pet. 43–44) that an American citizen tried in the Ryukyu Islands is constitutionally entitled to a jury composed entirely of Americans, the Constitution itself provides no support for that claim.

While it is true that "alienage" was a ground for challenging a juror at common law, that rule was not applied inexorably, particularly in some of the unincorporated territories of the United States. Indeed, at one time Congressional statutes specifically permitted non-citizens to serve as jurors in such areas. See *Carter* v. *United States,* 1 Indian Terr. 342, 37 S.W. 204, 205–206 (Ct. of Appeals of the Ind. Terr., 1896) (non-citizen Indians are competent grand jurors if otherwise qualified); cf. *Territory* v. *Harding,* 6 Mont. 323,

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why such testimony, if relevant, was not obtained during the nearly one year between the filing of the suit and entry of judgment by the district court, it was properly denied.

[12] Furthermore, it is clear that Congress does not regard provisions of the United States Code to be automatically applicable in the Ryukyus for in Section 6 of the Act of July 12, 1960, 74 Stat. 461, it provided:

> Nothing in this Act shall be construed to extend the application of any law of the United States to the Ryukyu Islands which would not otherwise be applicable here.

12 Pac. 750, 751 (1887) (non-citizens who had declared intention to become naturalized were proper jurors). While normally their strangeness to the area might provide a reason for a disqualification of aliens, this reason would clearly not apply to non-Americans residing in the Ryukyus.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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